

**WSR 18-17-007**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed August 1, 2018, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-074.

Title of Rule and Other Identifying Information: WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative.

Hearing Location(s): On September 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule [to] clarify that the agency covers vaccines according to the current schedule published by the Centers for Disease Control and Prevention and vaccines outside the schedule that are medically necessary.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-2005.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 does not impose any cost on small businesses.

August 1, 2018  
 Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-041, filed 1/12/15, effective 2/12/15)

**WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative.** (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

(b) Allergen immunotherapy services;

(c) Anesthesia services;

(d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);

(e) Emergency physician services;

(f) ENT (ear, nose, and throat) related services;

(g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);

(h) Habilitative services (refer to WAC 182-545-400);

(i) Reproductive health services (refer to chapter 182-532 WAC);

(j) Hospital inpatient services (refer to chapter 182-550 WAC);

(k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);

(l) Office visits;

(m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);

(n) Osteopathic treatment services;

(o) Pathology and laboratory services;

(p) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);

(q) Foot care and podiatry services (refer to WAC 182-531-1300);

(r) Primary care services;

(s) Psychiatric services;

(t) Psychotherapy services (refer to WAC 182-531-1400);

(u) Pulmonary and respiratory services;

(v) Radiology services;

(w) Surgical services;

(x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects

(e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;

(y) Telemedicine (refer to WAC 182-531-1730);

(z) Tobacco cessation counseling (refer to WAC 182-531-1720);

(aa) Vaccines for adults, adolescents, and children in the United States administered according to the current schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;

(bb) Other outpatient physician services.

(5) The agency covers physical examinations for Washington apple health clients only when the physical examination is for one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and provider notices.

### WSR 18-17-021

#### PROPOSED RULES

#### SECRETARY OF STATE

[Filed August 3, 2018, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-043.

Title of Rule and Other Identifying Information: Combined fund drive rules relating to disposal of decertified contributions.

Hearing Location(s): On September 25, 2018, at 9:00 a.m., at the office of the secretary of state, legislative building office.

Date of Intended Adoption: September 26, 2018.

Submit Written Comments to: Heather Lucas, P.O. [Box] 40250, Olympia, WA 98504, email heather.lucas@sos.wa.gov, fax 360-586-5629.

Assistance for Persons with Disabilities: Same as above.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 434-750-290 to change process for redirected donations.

Reasons Supporting Proposal: Streamlining process.

Statutory Authority for Adoption: RCW 41.04.033.

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

Name of Proponent: Philip Kerrigan, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Heather Lucas, Olympia.

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 relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 3, 2018

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 17-12-089, filed 6/6/17, effective 7/7/17)

**WAC 434-750-290 Decertified contributions.** The CFD must work directly with its donors to determine where to direct donations originally pledged to a participating organization or federation that has been deemed noneligible or decertified. The CFD must provide the donor with options to disburse the pledged and collected donations to other participating organizations or federations or provide a refund of collected donations for the open quarter. If a donor does not respond to the CFD regarding redirecting donations, the CFD (~~must issue a refund of all donations collected for the open quarter and cancel the donation. If the CFD determines it is not feasible to return such funds to donors, it~~) must determine the appropriate disposition of the funds.

### WSR 18-17-029

#### PROPOSED RULES

#### BELLEVUE COLLEGE

[Filed August 6, 2018, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-067.

Title of Rule and Other Identifying Information: Revise chapter 132H-169 WAC.

Hearing Location(s): On October 9, 2018, at 1 p.m., at Bellevue College, Room B201A.

Date of Intended Adoption: December 5, 2018.

Submit Written Comments to: Kathi Hutchins, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email Kathi.hutchins@bellevuecollege.edu, phone 425-564-2451, by October 9, 2018.

Assistance for Persons with Disabilities: Contact Katelynn Creeley, phone 425-564-4159, TTY 425-564-6189, email Katelynn.creeley@bellevuecollege.edu, by October 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College proposes amending chapter 132H-169 WAC to better conform with recent changes in the law concerning public records; model rules recommended by the attorney general's office, and proposed agency practices to include charging for electronic records.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120, 42.56.520, and chapter 304, Laws of 2017.

Statute Being Implemented: Chapter 304, Laws of 2017.

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

Name of Proponent: [Bellevue College], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathi Hutchins, A140, 425-564-2451.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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 statewide 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 6, 2018

D. L. Sullivan  
Executive Assistant  
to the President

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-020 Purpose.** The purpose of this chapter is to ~~((ensure compliance with the provisions of the Washington state public disclosure laws (RCW 42.17.250 ff.) governing access to public records, while at the same time preserving the right to privacy for college students and employees and minimizing disruption to the operation of college programs and services))~~ provide access to existing, identifiable, nonexempt public records of Bellevue College in accordance with the Public Records Act, chapter 42.56 RCW.

NEW SECTION

**WAC 132H-169-025 Description of college.** (1) **Governance.** Bellevue College is a public institution of higher education established under chapter 28B.50 RCW as a community college, which offers associate and baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **Main campus.** The main campus of the college is located at 3000 Landerholm Circle S.E., Bellevue, Washington. The college also offers educational programs online and at another campus located at 14673 N.E. 29th Place, Bellevue, Washington.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132H of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in policies and procedures available on the college web site.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college web site a documents index of the board's approved meeting minutes, motions, and resolutions. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College web site.** The college's official web site, available at <http://www.bellevuecollege.edu/> provides general information about the college and its board of trustees, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-030 Definitions.** (1) "Public record," ~~((as defined by RCW 42.17.020(36) means "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." All public records of Bellevue Community College, Community College District VIII, are considered to be available for public access except as exempted or limited by WAC 132H-169-070.~~

~~(2) "Writing" as defined by RCW 42.17.020(42) includes all means of recording any form of communication or representation, including documents, pictures, computer tapes or disks, and sound recordings.)~~ The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) "Public Records Act." References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.

(3) Requestor. A "requestor" is any person or entity requesting public records of the college pursuant to the Public Records Act.

(4) College. The term "college" means Bellevue College.

#### NEW SECTION

**WAC 132H-169-035 Public records officer.** (1) Designation. A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) Duties. The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) Records office. Inquiries regarding public records of the college may be addressed to the public records officer at the following address:

Public Records Officer  
Bellevue College  
3000 Landerholm Circle S.E.  
Bellevue, WA 98007  
425-564-2451  
recordsofficer@bellevuecollege.edu

(4) Office hours. The customary office hours of the public records office are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-040 Requests for ~~((access))~~ public records.** ~~((Requests for access to and/or copies of public records maintained at Bellevue Community College shall be made in writing to the Vice President for Administrative Services, 3000 Landerholm Circle SE, Bellevue, Washington, 98007. Requesters should submit form BCC 010-072, "Request for Public Records," or write a letter to the vice president for administrative services which:~~

~~((1) Provides the requester's name, full mailing address, and telephone number;~~

~~((2) States whether the requester is representing him/herself or is representing an agency or company, and if so, gives the agency or company name;~~

~~((3) For records concerning a past or present Bellevue Community College student, provides the name, student~~

~~identification number, and last date of attendance (if known) of that student;~~

~~((4) For records concerning a past or present Bellevue Community College employee, provides the name, job title or department, and last date of employment (if known) of that employee;~~

~~((5) Provides a specific and detailed description of the record being requested;~~

~~((6) States whether the requester wishes only to examine the record and will come to the college to do so or, instead, wishes to obtain a copy of the record;~~

~~((7) Certifies that the requester~~

~~((a) Will not use the information obtained through the request for public records for commercial purposes;~~

~~((b) Has read and understood chapter 132H-169 WAC, and~~

~~((c) Agrees to return the record in its original condition if the requester examines the record on campus or to pay the cost of having the copy made.))~~ (1) Written requests preferred. Request for public records of the college may be

addressed to the public records officer at the address given in WAC 132H-169-035. The college encourages, but does not require, requestors to use the public records request form made available by the public records office or online at <https://www.bellevuecollege.edu/legal/publicrecords/>. Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer.

(2) Contents of records requests. A request for public records must include the following information:

(a) The name and contact information of the person requesting the records;

(b) The requestor's mailing address, which may be an electronic mail address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer to identify and locate the records; and

(e) A statement indicating whether the requester wishes to inspect the records or to receive copies of the records in paper or electronic form.

(3) Lists of individuals for commercial purposes. State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request that the list will be used for a commercial purpose.

(4) Assistance in identifying records. The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-050 ((Response to)) Processing of records requests.** ~~((1) The vice president for administrative services or his/her designee will respond to the request within five business days after receiving it.~~

~~(2) Depending on the nature of the request and of the record concerned, the vice president for administrative services will respond in one of the following ways:~~

~~(a) Make the record available or provide a copy as requested;~~

~~(b) State that the record as described does not exist at Bellevue Community College at this time;~~

~~(c) Acknowledge the request and ask for additional descriptive information, in cases where the description provided is incomplete or unclear;~~

~~(d) Acknowledge the request and state a date by which the record(s) will be provided, for example in cases where the request is for large numbers of documents or records in out-of-the-ordinary formats, or when the request has been made at peak periods such as registration or the first week of instruction;~~

~~(e) Deny the request in whole or in part and indicate the specific reason for the denial.)) (1) Applicable law. Requests for public records will be processed in accordance with these rules and applicable provisions of Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.~~

~~(2) Prioritizing of requests. Public records requests generally will be processed in the order in which they are received by the records office and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.~~

~~(3) Clarification of requests. The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within thirty days of the request for clarification.~~

~~(4) Providing records by installment. If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records officer may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.~~

~~(5) Denial of bot requests. The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3) if the records officer reasonably believes the request was automatically generated by a computer program or script.~~

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-060 ((Appeal after request is denied)) Review of denials of records request.** ~~((If a request for access to public records is submitted according to~~

~~WAC 132H-169-040 and is denied, the college is required to conduct an internal review of the denial and the requester has the right to appeal the decision to deny access. The requester should address his/her reason for appeal in writing to the college president who, after consulting with the vice president for administrative services, other college administrators, and legal counsel as appropriate, shall respond in writing within five business days after receiving the appeal. The president's decision is considered final.)) (1) Petition for internal administrative review. A requestor who objects to the denial, or partial denial, of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.~~

~~(2) Review by attorney general's office. A requestor who objects to the denial, or partial denial, of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to: Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.~~

~~(3) Judicial review. A requestor may petition the superior court for judicial review of the college's decision denying a public records request, whether in whole or in part, by following the procedures in RCW 42.56.550. The denial of a petition for internal administrative review under subsection (1) of this section shall constitute the final agency action subject to judicial review.~~

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

**WAC 132H-169-070 ((Exemptions and limitations:)) Records exempt from inspection for copying.** ~~((1) Certain public records are exempt from public access according to RCW 42.17.310. Access to these records will not be granted unless the vice president for administrative services determines that disclosure would not affect any vital governmental interest. If the interest can be protected by deletion of personal references, access shall be granted following deletion of such material, and a reasonable time shall be allowed for deleting the material.~~

~~(2) Student educational records are available only in accordance with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), which establishes that the education records of students attending or having attended the college are confidential and can be released only with written permission of the student.~~

~~(3) Records concerning applicants to and employees of Bellevue Community College are available only to such faculty and staff members, including supervisory personnel, who must have access to certain records in order to carry out the business of the college. The only information contained in an individual's employee file which shall be available for public inspection shall be the name, status, salary, and teach-~~

~~ing duties of the employee. The employee, however, shall have full access to his/her personnel file as provided by the pertinent bargaining unit agreement.)~~ (1) Public Records Act exemptions. The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspection or copying under the Public Records Act or other applicable law.

(2) Commonly applied exemptions. The public records officer maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer and will typically be provided by the records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) Determining applicable exemptions. The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

#### NEW SECTION

**WAC 132H-169-085 Copying fees—Payments.** (1) Fees and payment procedures. The following copying fees and payment procedures apply to requests to the college under chapter 42.56 RCW and received on or after the effective date of this section.

(2) Inspection of records. There is no fee for inspecting public records made available for inspection by the public records officer.

(3) Actual costs not calculated. Pursuant to RCW 42.56.120 (2)(b), the college is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The institution 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 college functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(4) Default fees adopted. The college will charge for copies or records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The college will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's web site at <https://www.bellevuecollege.edu/legal/publicrecords/>.

(5) Advance payment required - Fee waivers. Requestors are required to pay for copies in advance of receiving records or an installment of records. The records officer will notify the requestor when payment is due. 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 consist of 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.

(6) Copying fee deposits. The public records officer may require an advance deposit of ten percent of the estimated fees when copying fees for an installment or an entire request or customized service charge, exceed twenty-five dollars.

(7) Payment method. Payment should be made by check or money order payable to Bellevue College. The college 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) Closure of request for nonpayment. The college 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.

#### NEW SECTION

**WAC 132H-169-095 Court protection of public records.** (1) Notifying interested persons. The college, as required or permitted by law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56.540.

(2) Applying for court protection. The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in the chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-169-010 Title.

WAC 132H-169-080 Notification of affected persons.

|                  |                                  |
|------------------|----------------------------------|
| WAC 132H-169-090 | Protest concerning access.       |
| WAC 132H-169-100 | Requests for review only.        |
| WAC 132H-169-110 | Requests for copies.             |
| WAC 132H-169-120 | No obligation to create records. |
| WAC 132H-169-130 | Sanctions.                       |

**WSR 18-17-035**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 7, 2018, 11:15 a.m.]

Continuation of WSR 18-12-055.

Preproposal statement of inquiry was filed as WSR 17-23-049.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-221 and 181-79A-257 to clarify requirements for certain nation[al] board certified counselors and psychologists to earn professional certificates including out-of-state educators.

Hearing Location(s): On September 26, 2018, at 8:30, at the DoubleTree, 322 North Spokane Falls Court, Spokane, WA 99201.

Date of Intended Adoption: September 26, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by September 19, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by September 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Supports nationally recognized credentials, adjusts to the closure of professional level programs for counselors and psychologists.

Reasons Supporting Proposal: Streamlines requirements and honors national standards.

Statutory Authority for Adoption: RCW 28A.410.220.

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

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.

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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.

August 7, 2018  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

**WAC 181-79A-221 Academic and experience requirements for certification—School counselors and school psychologists.** Candidates for school counselor and school psychologist certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program. This examination shall be an examination of an accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC) or, in the case of school psychologists, hold the ~~((NCSP accreditation))~~ Nationally Certified School Psychologist (NCSP) credential from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) Residency.

(i) Hold a master's degree with a major in counseling.

(ii) Completion of an approved school counselor program.

(b) Continuing.

(i) Hold or have held an initial or residency school counselor certificate, and have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by an accredited institution or one hundred fifty clock hours of study which meets the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. The study shall:

(A) Be based on the school counselor performance domains included in WAC 181-78A-270 (4)(a);

(B) Be taken subsequent to the issuance of the most recent initial or residency school counselor certificate.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the role of school counselor with an authorized employer—i.e., school district, educational service district, state agency, private school, or private school system—and at least thirty days of such employment with the same employer.

(c) Professional. A professional certificate may be earned by an individual who holds ~~((or has held))~~ a valid school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(d) Beginning with certificates first issued or renewed after July 1, 2015, continuing and professional certificates for school counselors include a requirement for suicide prevention training per RCW 28A.410.226.

(2) School psychologist.

(a) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) Completion of an approved school psychology program.

(b) Continuing.

(i) Hold or have held an initial or residency school psychologist certificate, a master's degree with a major or specialization in school psychology, and have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by an accredited institution or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. The study shall:

(A) Be based on the school psychologist performance domains included in WAC 181-78A-270 (5)(a);

(B) Be taken subsequent to the issuance of the most recent initial or residency school psychologist certificate.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the role of school psychologist with an authorized employer—i.e., school district, educational service district, state agency, private school, or private school system—and at least thirty days of such employment with the same employer.

(c) Professional. An individual who holds ~~((an NCSP certificate))~~ a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for professional certification.

(d) Beginning with certificates first issued or renewed after July 1, 2015, continuing and/or professional certificates for school psychologists include a requirement for suicide prevention training per RCW 28A.410.226.

**AMENDATORY SECTION** (Amending WSR 15-23-013, filed 11/6/15, effective 12/7/15)

**WAC 181-79A-257 Out-of-state candidates.** Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Residency certificates. The residency certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who meets one of the following:

(a) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter, and has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet

the qualifications described in (a) of this subsection, a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from ~~((a regionally))~~ an accredited college or university.

(ii) Holds or has held a certificate in the role, comparable to a residency certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years ~~((within the last seven years))~~.

(c) Holds an appropriate degree from ~~((a regionally))~~ an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) ((certificate)) credential issued by the National Association of School ((Psychology Certification Board (NSPCB) after December 31, 1991,) Psychologists (NASP); and applies for ~~((an initial/residency))~~ a residency educational staff associated school psychologist certificate.

(2) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

(3) As per RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

**WSR 18-17-043**

**PROPOSED RULES**

**LIQUOR AND CANNABIS  
BOARD**

[Filed August 8, 2018, 11:31 a.m.]

Original Notice.

August 8, 2018

Jane Rushford

Chair

Preproposal statement of inquiry was filed as WSR 18-08-089.

Title of Rule and Other Identifying Information: WAC 314-29-003 Purpose, 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?, 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule?, 314-29-020 Group 1 violations against public safety, and 314-29-040 Information about liquor license suspensions.

Hearing Location(s): On October 3, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after October 17, 2018.

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by October 3, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by September 28, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules revisions to chapter 314-29 WAC implement legislation that passed during the 2018 legislative session, as well as provide clarifying and technical updates. The rules provide direction regarding schedules of penalties for licensees who have manufacturing licenses and participate in ancillary activities.

Reasons Supporting Proposal: Rule making is necessary to implement HB 2517 (SL 2018, chapter 25). Other changes provide clarifying and technical updates.

Statutory Authority for Adoption: Chapter 66.24 RCW, 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: Janette Benham, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1760; Implementation: Rebecca 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. A cost-benefit analysis was not required under RCW 34.05.328 because the proposed new rule does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis 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; and rule content is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

**WAC 314-29-003 Purpose.** The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or permit holder receives an administrative violation notice alleging a violation of a liquor (~~control~~) and cannabis board statute or regulation.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?** (1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

**(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect. After twenty days and up to thirty days from the date of the administrative violation notice, and if the violation includes a monetary penalty, the licensee may pay a twenty-five percent fee in addition to the recommended penalty in lieu of suspension.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

**(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

**WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule?** (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline

what penalty a liquor licensee can expect if a licensee or employee violates a liquor (~~control~~) and cannabis board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive. For purposes of this section, ancillary activities are defined as activities an alcohol manufacturer participates in and include all activities, licenses, and privileges involving the public, such as serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license, or serving alcohol with a special occasion license.

(2) Penalties for violations by liquor licensees or employees are broken down into (~~four~~) five categories:

(a) Group One—Public safety violations, WAC 314-29-020.

(b) Group Two—Regulatory violations, WAC 314-29-025.

(c) Group Three—License violations, WAC 314-29-030.

(d) Group Four—Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(e) Group Five—Public safety violations for sports entertainment facility licenses, WAC 314-29-038.

(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor (~~control~~) and cannabis board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension during a settlement conference as outlined in WAC 314-29-010(3).

| <b>(a) Mitigating circumstances</b>   | <b>(b) Aggravating circumstances</b>  |
|---|---|
| Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.<br>Examples include: <ul style="list-style-type: none"> <li>• Having a signed acknowledgment of the business' alcohol policy on file for each employee;</li> <li>• Having an employee training plan that includes annual training on liquor laws.</li> </ul>   | Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of a liquor license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.<br>Examples include: <ul style="list-style-type: none"> <li>• Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor (<del>control</del>) and cannabis board officer, or when people have sustained injuries;</li> <li>• Not checking to ensure employees are of legal age or have appropriate work permits.</li> </ul> |
| (c) In addition to the examples in (a) and (b) of this subsection, the liquor ( <del>control</del> ) and cannabis board will provide and maintain a list of business practices for reference as examples where business policies and/or practices may influence mitigating and/or aggravating circumstances. The established list will not be all inclusive for determining mitigating and/or aggravating circumstances, and may be modified by the liquor ( <del>control</del> ) and cannabis board. The list shall be accessible to all stakeholders and the general public via the internet. |   |

**(5) Ancillary activity violations:**

(a) When a violation or violations are part of ancillary activities, all ancillary activities including those at the manu-

facturing facility or associated locations involving the public will be subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038. When violations are part of

ancillary activities, the manufacturing license will not be suspended, revoked, or canceled.

(b) When a violation or violations are not part of ancillary activities, the manufacturing license is subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038 and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

**WAC 314-29-020 Group 1 violations against public safety.** (1) Group 1 violations are considered the most serious

because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor ~~((control))~~ and cannabis board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

| Violation Type   | 1st Violation                             | 2nd Violation in a two-year window | 3rd Violation in a two-year window | 4th Violation in a two-year window |
|--|---|------------------------------------|------------------------------------|------------------------------------|
| <b>Violations involving minors:</b><br><b>Sale or service to minor:</b> Sale or service of alcohol to a person under 21 years of age.<br><br><b>Minor frequenting</b> a tavern, lounge, or other restricted area.<br>RCW 66.44.270<br>RCW 66.44.310<br>WAC 314-11-020<br>WAC 314-16-150                        | 5 day suspension or \$500 monetary option | 7 day suspension                   | 30 day suspension                  | Cancellation of license            |
| <b>Sale or service to apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person.<br>RCW 66.44.200<br>WAC 314-16-150   | 5 day suspension or \$500 monetary option | 7 day suspension                   | 30 day suspension                  | Cancellation of license            |
| <b>Conduct violations:</b><br><b>Disorderly conduct</b> by licensee or employee, or permitting on premises.<br><br><b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty.<br><br><b>Criminal conduct:</b> Permitting or engaging in criminal conduct.<br>WAC 314-11-015 | 5 day suspension or \$500 monetary option | 7 day suspension                   | 30 day suspension                  | Cancellation of license            |
| <b>Lewd conduct:</b><br>Engaging in or permitting conduct in violation of WAC 314-11-050.  | 5 day suspension or \$500 monetary option | 7 day suspension                   | 30 day suspension                  | Cancellation of license            |

| Violation Type  | 1st Violation   | 2nd Violation in a two-year window | 3rd Violation in a two-year window | 4th Violation in a two-year window |
|---|---|------------------------------------|------------------------------------|------------------------------------|
| <b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties.<br>RCW 66.28.090<br>RCW 66.44.370<br>WAC 314-11-090 | 5 day suspension or \$500 monetary option                       | 7 day suspension                   | 30 day suspension                  | Cancellation of license            |
| <b>Condition of suspension violation:</b> Failure to follow any suspension restriction while liquor license is suspended.<br>WAC 314-29-040                                   | Original penalty plus 10 day suspension with no monetary option | Cancellation of license            |                                    |                                    |

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

**WAC 314-29-040 Information about liquor license suspensions.** (1) On the date a liquor license suspension goes into effect, a liquor (~~control agent~~) and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor (~~control~~) and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

- (a) Are required to maintain compliance with all applicable liquor laws and rules;
- (b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;
- (c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").
- (d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor (~~control~~) and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

- (a) A retail liquor licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.
- (b) A nonretail licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.
- (c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.

**WSR 18-17-046**

**PROPOSED RULES**

**HEALTH CARE AUTHORITY**

[Filed August 8, 2018, 1:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-097.

Title of Rule and Other Identifying Information: WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF).

Hearing Location(s): On September 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal, Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2651 amends RCW 74.09.340 to increase the PNA for people in residential and institutional care settings. The agency is amending WAC 182-513-1105 to reflect the changes in HB 2651.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; HB 2651, 65th legislature, 2018 regular session; ESSB 6032, sections 204 (2)(p) and 207(13), 2018 supplemental operating budget.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Stephen Kozak, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1343.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 making applies to client eligibility and does not affect small businesses.

August 8, 2018  
Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

**WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF).** (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is \$70 for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is \$70 for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section(=

~~(a) Is \$57.28 for clients~~), who reside in a medical institution(=)

~~((b) Is \$62.79 for clients who reside))~~ in an ALF, is \$70.

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5)(b) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at [www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

## WSR 18-17-061

### PROPOSED RULES

### DEPARTMENT OF ECOLOGY

[Order 16-03—Filed August 9, 2018, 12:51 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 17-06-017.

Title of Rule and Other Identifying Information: Chapter 173-303 WAC, Dangerous waste regulations, these regulations set standards for the safe management of dangerous wastes (DW).

Hearing Location(s): On September 26, 2018, at 1 p.m., webinar only. The hearing begins at 1:00 p.m. with a brief presentation and question and answer session, followed by the formal hearing and testimony.

A webinar is an online meeting forum that you can attend from any computer using internet access. To join the webinar, click on the following link for more information and instructions: <https://watech.webex.com/watech/onstage/g.php?MTID=e464688ca558538c344ce4f32b28d72b7>.

Event Number: 802 585 936.

Event Password: Ecology1.

For audio only, call United States toll number 1-650-479-3208 or toll-free 1-877-668-4493 and enter access code 802 585 936. Or to receive a free call back, provide your phone number when you join the event.

On September 28, 2018, at 10:00 a.m., in-person meeting, at the Ecology Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008; and at the Ecology Eastern Regional Office, 4601 North Monroe Street, Spokane, WA 99205. The hearing begins at 10:00 a.m. with a brief presentation and question and answer session, followed by the formal hearing and testimony. You may attend in person at either of the listed locations. The Spokane location will be connected to the Bellevue hearing location by video conference.

Date of Intended Adoption: January 16, 2019.

Submit Written Comments to: Robert Rieck, P.O. Box 47600, Olympia, WA 98504-7600 (U.S. mail), 300 Desmond Drive S.E., Lacey, WA 98503 (parcel delivery services), email please submit comments online, by mail, or at one of the public hearings, online form <http://wt.ecology.commentinput.com/?id=4AbZi>, by October 5, 2018.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, fax 360-407-6137, TTY

877-833-6341, email hanna.waterstrat@ecy.wa.gov, Washington relay service 711, by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 173-303 WAC implements chapter 70.105 RCW and Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Chapter 70.105 RCW gives the department of ecology (ecology) hazardous waste program authority to adopt regulations for DW management. Ecology is required to adopt certain federal hazardous waste rules to maintain its authorization by the Environmental Protection Agency (EPA) and remain consistent with EPA regulations. Ecology is planning to adopt some optional EPA rules in order to provide regulatory relief or make the regulations easier to comply with. Amendments will also include several minor state-initiated technical and editorial corrections and clarifications. Ecology had previously (in the preproposal statement of inquiry CR-101) indicated we would include rules for DW pharmaceuticals, but decided not to propose these rules and wait for EPA to adopt final hazardous waste pharmaceutical rules.

Ecology plans to amend specific sections of the DW regulations to incorporate new federal hazardous waste rules, including:

- (1) Conditional exclusions for solvent-contaminated wipes.
  - (2) Definition of solid waste: Revisions to solid waste variances and to the definition of legitimacy.
  - (3) Revisions to the export provisions of the cathode ray tube (CRT) rule.
  - (4) Hazardous waste generator improvements rule.
  - (5) Hazardous waste export-import revisions.
  - (6) Hazardous waste electronic manifest rule.
- Effects of adopting federal rules required by EPA:

- The electronic manifest rule, revisions to import-export rules and revisions to the export provision of the cathode ray tube rule will improve the transport and tracking of DW.
- The definition of solid waste rule will help ensure the legitimacy of DW recycling.
- Parts of the generator improvement rule fix regulatory gaps, clarify how the regulations work and make technical corrections. New hazard label rules for tanks and containers will help ensure labels are readable and understandable by workers and the public, leading to increased safety awareness.

Effects of adopting optional federal rules:

- Parts of the generator improvement rule will benefit generators by reorganizing the regulations to be more user-friendly. Rules that give more compliance flexibility include an exemption for episodic generation and consolidation of small quantity generator (SQG) waste by large quantity generators (LQG).
- The solvent-contaminated wipes rule reduces regulatory requirements to safely manage and recycle solvent-contaminated wipes.

Effects of state-initiated changes:

- State-initiated amendments include changes to the polychlorinated biphenyl (PCB) waste exclusion, which should help reduce duplicative regulation of state-only PCB wastes also regulated under the Toxic Substance[s] Control Act, 40 C.F.R. Part 760.
- Another state-initiated change includes above-ground signage requirements for underground DW tanks, leading to increase[d] safety awareness.

See the proposed language for more details on all changes.

Reasons Supporting Proposal: See purpose of the proposal and its anticipated effects, above.

Statutory Authority for Adoption: Chapter 70.105 RCW, Hazardous Waste Management Act.

Statute Being Implemented: Chapter 70.105 RCW.

Rule is necessary because of federal law, 40 C.F.R. Parts 260-279.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Rieck, Lacey, 360-407-6751; Implementation and Enforcement: Darin Rice, Lacey, 360-407-6702.

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 Robert Rieck, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6751, TTY see "assistance for persons with disabilities" above, email robert.rieck@ecy.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 19.85.025(3) as the 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; 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 34.05.310 (4)(c) and (d).

Explanation of exemptions: We are incorporating by reference federal import/export regulations for excluded CRTs. We are also correcting or clarifying language.

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

**Small Business Economic Impact Statement (SBEIS)  
Relevant Information for State Register Publication  
Proposed Amendments to Chapter 173-303 WAC, Dan-  
gerous Waste Regulations**

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

*This information is excerpted from ecology's complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the Regulatory Analyses (Ecology Publication No. 18-04-021, August 2017).*

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES:**

**Baseline:** The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed amendments.

The regulatory baseline for this analysis is the existing state rule: Dangerous waste regulations, chapter 173-303 WAC. This chapter consists of both federal provisions and state-only requirements. Ecology analyzed the elements of the proposed rule amendments that are different than the existing state rule. However, we are not analyzing amendments that incorporate RCRA without state modification.

**Federal laws and rules:** RCRA is the federal law that regulates hazardous waste at the federal level. RCRA gives EPA the authority to regulate hazardous waste from the "cradle-to-grave," which includes the generation, transportation, treatment, storage, and disposal (TSD) of hazardous waste. RCRA also set[s] forth a framework for the management of nonhazardous solid wastes. In 1984, congress adopted amendments to RCRA that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action procedures for releases of hazardous waste. The 1986 amendments to RCRA enabled EPA to address environmental problems that will result from underground tanks storing petroleum and other hazardous substances.

The primary set of federal rules related to management of hazardous waste is found in Title 40 of the Code of Federal

Regulations, Parts 260 through 279. EPA has authorized Washington and other states to operate their state hazardous waste programs in lieu of the federal RCRA program. As a condition of authorization, EPA requires states to incorporate certain mandatory provisions of the federal rules and laws in the state DW rules. In some situations, states must adopt certain of these mandatory provisions of the federal rule, without modification. In other cases, the state might make changes to the federal rule, as long as the state rule is consistent with and as least as stringent as the federal rule.

**State laws and rules:** The authorizing statute for chapter 173-303 WAC is chapter 70.105 RCW, Hazardous waste management. Chapter 70.105 RCW provides a comprehensive framework for the planning, regulation, control, and management of DW which helps prevent land, air, and water pollution while conserving natural, economic, and energy resources of the state. The statute provides for the prevention of problems related to improper management of DW. Note, the federal rule uses the term hazardous waste and the state uses the term dangerous waste. Another purpose of the statute is to ensure that DW management facilities are operated safely, and sited to minimize harm to people and the environment. Another major goal of chapter 70.105 RCW is to promote waste reduction and to encourage other improvements by generators in waste management practices. To accomplish these goals, the statute gives ecology the authority to enact and enforce regulations relating to management of hazardous wastes and releases of hazardous substances. Ecology implements federal and state laws through chapter 173-303 WAC, Dangerous waste regulations, which is the baseline for this analysis. Chapter 173-303 WAC includes the provisions of the federal rules required by RCRA for authorized states, certain federal provisions adopted by ecology at its discretion, and provisions initiated by ecology under state authority. Specifically, chapter 173-303 WAC includes provisions related to:

- Designation of DW.
- Generator management of DW.
- Reporting of DW.
- Transport of DW.
- TSD and recycling of DW.
- Standards for closure and postclosure of facilities that handle DW.
- Financial assurance requirements.

**Proposed amendments:** The proposed amendments make the following changes:

- Amendments based on federal rules:
  - Hazardous waste generator improvements rule.
  - Hazardous waste export-import revisions.
  - Revisions to the export provisions of the CRT rule.
  - Hazardous waste electronic manifest system.
  - Revisions to the definition of solid waste.
  - Conditional exclusions from solid waste and hazardous waste for solvent contaminated wipes.
- State-initiated proposed amendments:
  - Secondary containment.
  - Used oil facility reporting.

- TSD container labeling.
- Tank system labeling.
- Reduce duplicative regulation of waste.
- Clarifications and revisions with no material impact on requirements.

**Amendments based on federal rules.**

**Hazardous waste generator improvements rule (GIR):**

**Baseline:** The baseline for these proposed amendments is the existing state rules and existing RCRA.

Optional portions of the RCRA GIR where the state proposed rule is different:

- Including examples of acceptable labeling systems for hazard labels on containers, tanks, and containment buildings.
- Allowing local fire authorities to waive the fifty foot property line setback requirement for LQGs containers holding ignitable and reactive wastes.
- Allowing the medium quantity generators (MQG) and LQGs to accumulate wastes on drip pads for ninety days, then an additional one hundred eighty or ninety days accumulation at a central accumulation area, respectively.
- Including "regular maintenance" as a way episodic wastes are generated.
- Requiring any generator who is an LQG for at least one month out of the year to submit a biennial report for entire year.

**Proposed:** The proposed amendments conform to the RCRA GIR except where they are more stringent and/or already exist in the baseline state rule as described below:

- Washington has required hazard labels for many years. The proposed amendments do not include examples of labeling systems. Instead, they give examples of DW characteristics and criteria. Labels on containers must also be legible from twenty-five feet or letters must be at least 1/2 inch in height.
- The proposed amendments maintain the state baseline requirement of referencing International Fire Code (IFC) standards for separation distances for storage of explosives. The baseline state rule currently subjects MQGs to the IFC standards for storage of ignitable and reactive wastes in containers.
- The proposed amendments allow MQG wood treatment facilities one hundred eighty days total accumulation time on drip pads and in central accumulation areas, and ninety days total accumulation time for LQGs. These total accumulation times are the same as in the baseline state rule. In addition the wood treatment facility must maintain records of the original start date waste begins to be accumulated on the drip pad.
- "Regular maintenance" is not included as an example of episodic waste generation. This is the same as in the baseline state rule.
- Explicit clarification that annual reporting is required for both MQGs and LQGs generating waste for at least one month of a year.

**Expected impact:** Comparing the baseline and the proposed amendments, we expect the following impacts:

- The proposed amendments to labeling requirements are likely to result in one-time additional labeling costs for some facilities with inadequate labels, and benefits of staff, public, and environmental safety in being able to recognize the hazards posed by wastes.
- There is no change in fire code requirements from the baseline, and we do not expect costs or benefits to result.
- The drip pad allowance for accumulating DW is a less stringent federal standard that provides MQGs with an additional accumulation alternative. Currently, MQGs can accumulate DW in containers, tanks, and containment buildings. Allowance of drip pad accumulation would provide the benefit of an additional accumulation option that is not offered under the baseline. Additionally, the less stringent accumulation time limit allows waste that is removed from a drip pad to be moved to another accumulation unit for the remainder of the MQG's one hundred eighty day or LQG's ninety day time limit.
- Recordkeeping of drip pad accumulation times is a federal requirement, and is therefore not expected to create costs or benefits as compared to the baseline.
- Episodic "Regular maintenance" waste is not part of the baseline rule, but not including it as an example of episodic waste generation in the proposed amendments is not expected to result in costs or benefits as compared to the baseline.
- The proposed amendment explicitly clarifying that SQGs that generate DW as MQGs for at least one month to report for the year is not a change from the baseline. Existing DW rules already require SQGs that generate higher levels of waste as MQGs to report annually via the following pathway:
  - WAC 173-303-060(5) directs generators with an EPA or state identification number to submit an annual report as required under WAC 173-303-070(8), 173-303-220, and 173-303-390.
  - WAC 173-303-070 (8)(c) directs SQGs with an identification number to submit an annual report according to WAC 173-303-220.
  - WAC 173-303-220 (1)(a) also says that generators with an identification number must submit an annual report, according to the DW annual report instructions (ecology publication number 03-04-018).
  - Page 21 of the DW annual report instructions directs MQGs with an active identification number at any time during the reporting year to complete a generation and management form for each waste stream generated.

**Hazardous Waste Export-Import Revisions:**

**Baseline:** The baseline for these proposed amendments is RCRA and the existing state rule. EPA amended existing hazardous waste export and import regulations. The rule:

- Makes existing export and import related requirements more consistent with the current import-export require-

ments for shipments between members of the Organization for Economic Cooperation and Development.

- Enable electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports).
- Enable electronic validation of consent in the automated export system (AES) for export shipments subject to RCRA export consent requirements prior to exit. The AES resides in the United States Customs and Border Protection's Automated Commercial Environment.

**Proposed:** The proposed amendments include the above RCRA amendments without change.

**Expected impact:** We do not expect any impacts in excess of the baseline as a result of these proposed amendments.

#### **Hazardous Waste Management System - e-Manifest System:**

**Baseline:** The baseline for these proposed amendments is RCRA and the existing state rule. This rule:

- Establishes new requirements authorizing the use of electronic manifests (or e-Manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste.
- Implements certain provisions of the Hazardous Waste Electronic Manifest Establishment Act (Public Law 112-195), which directs EPA to establish an e-Manifest system and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system.
- Clarifies explicitly that e-Manifest documents obtained from the agency's national e-Manifest system and completed in accordance with the rule, are the legal equivalent of the paper manifest forms that are currently authorized for use in tracking hazardous waste shipments. Upon completion of the e-Manifest system, the electronic manifest documents authorized by this final regulation will be available to manifest users as an alternative to the paper manifest forms, to comply with federal and state requirements respecting the use of the hazardous waste manifest. Users who elect to opt out of the electronic submittal to the e-Manifest system may continue to use the paper manifest to track their shipments during transportation, which then will be submitted by the designated facility for inclusion in the e-Manifest system.
- Specify how issues of public access to manifest information will be addressed when manifest data are submitted and processed electronically.

**Proposed:** The proposed amendments include the above RCRA amendments without change.

**Expected impact:** We do not expect any impacts in excess of the baseline as a result of these proposed amendments.

#### **Revisions to the Definition of Solid Waste:**

**Baseline:** The baseline for these proposed amendments is RCRA and the existing state rule. EPA revised several recycling-related provisions associated with the definition of solid waste used to determine what is a hazardous waste

under Subtitle C of RCRA. These revisions also include exemptions for:

- Solvent remanufacturing.
- Materials recycled under control of the generator.
- Materials transferred for recycling - known as the "transfer based exclusion."
- Nonwaste determination.

**Proposed:** The proposed amendments include multiple recycling-related provisions in line with EPA's revisions, but do not include the above exemptions.

Definitions associated with exemptions not included in the proposed amendments are therefore not needed, and so the proposed amendments do not include definitions for:

- "Intermediate facility."
- "Land based units."
- "Nonwaste determination."
- "EPA's amended definition of "reclaim"."

**Expected impact:** While a few of the proposed amendments are more stringent than RCRA, the federal exemptions we are not proposing are also not part of the baseline state rule. We therefore do not expect these proposed amendments to result in impacts as compared to the baseline.

Conditional exclusions from solid waste and hazardous waste for solvent **contaminated wipes**.

**Baseline:** The baseline for these proposed amendments is the revised RCRA hazardous waste management regulations for solvent-contaminated wipes. The rule revises the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused, and revises the definition of hazardous waste to conditionally exclude solvent-contaminated wipes that are disposed of. The exclusions include solvent-contaminated wipes that are reused or disposed of in:

- Solid waste landfills.
- Solid waste combustors.
- DW landfills.
- DW incinerators.

**Proposed:** The proposed amendments are consistent with EPA's rule revisions, except they do not include the conditional exemption for disposal at:

- Solid waste landfills.
- Solid waste combustors.

**Expected impact:** Under the proposed amendments, solvent-contaminated wipes that are laundered do not count toward generator status determination resulting in lessened requirements if generator status is affected. This could result in a cost-savings, and would result in encouragement of recycling of solvent-contaminated wipes (laundering and reuse) rather than them being sent to a landfill or incinerator.

There may be an additional cost-savings associated with the conditional exemption for solvent-contaminated wipes sent to DW landfills or incinerators. This cost-savings would only exist if generators choose to take advantage of the conditional exemption.

**State-initiated proposed amendments.****Secondary containment:**

**Baseline:** Under the baseline state rule, MQG and LQG central accumulation areas built before 1986 do not need secondary containment, unless ecology determines there is an environmental threat posed from lack of secondary containment.

**Proposed:** The proposed amendments require that all central accumulation areas have secondary containment.

**Expected impact:** The proposed amendments are likely to result in costs to any facilities that have not upgraded facilities and moved their central accumulation areas since before 1986. Benefits of secondary containment would include protection of staff and public health, and environmental health, in the event a spill took place. The number of these facilities needing to comply is likely to be minimal because most would have upgraded in the over three decades since the year of this baseline exemption.

**Used oil facility reporting:**

**Baseline:** The annual report instructions for used oil facilities require that they report annually. The baseline state rules do require them to report annually, but the used oil rules reference EPA used oil regulations, which say only report biennially.

**Proposed:** The proposed amendments explicitly require annual reporting for used oil transporters, used oil processors, and used oil burners.

**Expected impact:** We do not expect this proposed amendment to create costs as compared to the baseline, which already requires annual reporting. There is a likely benefit of reducing confusion regarding existing annual reporting requirement[s] and the reference to EPA used oil regulations.

**Container labeling:**

**Baseline:** The state rule requires DW labels and risk labels on DW containers.

**Proposed:** The proposed amendments alter labeling requirements along with similar changes to RCRA, but set different labeling examples and requirements. The state-only components of the proposed amendments give examples of hazard labels to include DW characteristics and criteria. Labels must also be legible from twenty-five feet or letters must be at least 1/2 inch in height. RCRA includes as hazard label examples hazardous waste characteristics and labeling systems used by United States Department of Transportation and other organizations. RCRA does not include the requirement that labels be legible and understandable.

**Expected impact:** The proposed amendments to labeling requirements are likely to result in one-time additional labeling costs for some facilities with inadequate labels, and benefits of staff, public, and environmental safety in being able to recognize the hazards posed by wastes.

**Tank system labeling:**

**Baseline:** The baseline requirement under RCRA and the state rule is posting of a label[s] identifying tank contents and major risks, legible at fifty feet.

**Proposed:** The proposed amendments require DW labels and hazard label[s] that adequately show the hazards for tank systems. Additionally signage is required for aboveground postings for underground tanks.

**Expected impact:** The proposed amendments to signage of underground storage tanks and labels for all other DW tanks requirements are likely to result in one-time additional signage or label costs for some facilities with inadequate or missing signs or signage at aboveground and underground tanks and tank systems. Benefits include increased environmental safety for staff and the public in being able to recognize the hazards posed by wastes.

**Reduce duplicative regulation of waste:**

**Baseline:** The baseline for these rule revisions is the existing state rule and federal RCRA. RCRA excludes PCB dielectric fluid and electric equipment containing such fluid, which are also regulated under 40 C.F.R. Part 761. The baseline state rule excludes more materials than EPA, including PCB materials regulated under 40 C.F.R. Part 761.60, meaning the exclusion could also exclude contaminated hydraulic equipment and several other items listed in 761.60, and be less stringent than RCRA.

**Proposed:** The proposed amendments align our exclusion with RCRA by narrowing the exclusion to only include PCB dielectric fluid and electric equipment containing such fluid. The proposed amendments add an exemption for state-only PCB wastes that are also regulated under 40 C.F.R. Part 761.

**Expected impact:** The proposed amendments are likely to result in a reduction in double regulation of PCB wastes that are also regulated under 40 C.F.R. Part 761. This would reduce confusion and potential duplicative compliance requirements for two separate sets of regulations.

**Clarifications and revisions with no material impact on requirements:**

**Baseline:** The baseline for clarifications and revisions with no material impact on requirements is the existing state rule.

**Proposed:** The proposed amendments include a number of clarifications that do no [not] change requirements as compared to the baseline, but are intended to eliminate obsolete language, clarify wording, update references, and make other revisions to facilitate understanding of, and compliance with, the rule.

**Expected impact:** We do not expect any impacts in excess of the baseline as a result of these proposed amendments.

**COSTS OF COMPLIANCE: EQUIPMENT.**

The proposed amendments are likely to result in costs to any facilities that have not upgraded facilities and moved their secondary containment since before 1986. The number of facilities that have not upgraded their secondary containment is likely to be minimal. In the thirty-two years since 1986, facilities have likely updated and moved their central containment areas triggering secondary containment requirements under the baseline.

**COSTS OF COMPLIANCE: SUPPLIES.**

**Generators:** The proposed amendments to labeling requirements are likely to result in one-time additional labeling costs for some facilities with inadequate labels. It is not clear how prevalent inadequate labels that would need to be replaced are, the number of those labels at facilities, and the degree of updating or replacement needed to bring labels into compliance. We are therefore including this cost qualita-

tively. Ecology inspectors have observed labels that do not adequately communicate the hazards associated with DWs, and are not readable at a safe distance. The flexibility provided for under the proposed amendments, and examples of waste characteristics included to facilitate understanding, however, are likely to allow facilities to expend minimal costs to update labels.

The proposed amendments to requirements for signage of underground storage tanks and labeling of aboveground storage tanks are likely to result in one-time additional signage or labeling costs for some generator facilities with inadequate or missing signs at underground tanks and tank systems, and benefits of staff, public, and environmental safety in being able to recognize the hazards posed by wastes. It is not clear how prevalent inadequate or missing signs on underground tank systems are, the number of facilities with underground tank systems missing signage, and the degree of updating or replacement needed to bring any existing signs into compliance. We are therefore including this cost qualitatively.

**TSD:** The proposed amendments to label requirements are likely to result in one-time additional labeling costs for some facilities. It is not clear how prevalent inadequate signs that would need to be replaced are, the number of TSD containers bearing those labels, and the degree of updating or replacement needed to bring labels into compliance. We are therefore including this cost qualitatively.

There are thirteen TSD and recycling facilities operating in the state. Ecology inspectors have observed signs that do not adequately communicate the hazards associated with hazardous wastes at a safe distance. The flexibility provided for under the proposed amendments, and examples of waste characteristics included to facilitate understanding, however, are likely to allow facilities to expend minimal costs to update labels.

The proposed amendments to requirements for signage of underground storage tanks and labeling of aboveground storage tanks are likely to result in one-time additional signage or labeling costs for some TSD facilities with inadequate or missing signs at underground tanks and tank systems, and benefits of staff, public, and environmental safety in being able to recognize the hazards posed by wastes. It is not clear how prevalent inadequate or missing signs on underground tank systems are, the number of facilities with underground tank systems missing signage, and the degree of updating or replacement needed to bring any existing signs into compliance. We are therefore including this cost qualitatively.

**COSTS OF COMPLIANCE: LABOR.**

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of labor.

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES.**

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS.**

Where applicable, ecology estimates administrative costs ("overhead") as part of the cost of labor and professional services, above.

**COSTS OF COMPLIANCE: OTHER.**

Not applicable.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:**

We could not quantify the likely costs of the proposed amendments, due to uncertainty about:

- The number of generator and TSD containers, and aboveground tanks, with currently inadequate labels.
- The number of underground tanks and tank systems with currently inadequate or missing signage.

Small facilities are likely to have fewer containers and tanks than large facilities. If small businesses were also likely to own/operate these small facilities, compliance costs are likely to be smaller at small businesses.

However, it is unclear, whether we can assume the ratio of inadequate labels, or inadequate or missing signs, at small businesses compared to the largest ten percent of businesses is the same as the ratio of employees between small and large businesses. This is further confounded by the inability to quantify whether small or large businesses are more likely to have inadequate signs, or whether the likelihood is the same.

We therefore conclude that it is not clear that the proposed amendments have a disproportionate impact on small businesses. However, because we cannot establish quantitatively that the proposed amendments do not place disproportionate compliance cost burden on small businesses, ecology included cost-reducing elements in the proposed rule. See Section 7.4 for discussion.

**CONSIDERATION OF LOST SALES OR REVENUE:**

Businesses that would incur costs could experience reduced sales or revenue if compliance costs would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to:

- Each business's production and pricing model (whether additional lump-sum costs significantly affect marginal costs).
- The specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices.
- The relative responsiveness of market demand to price changes.

The proposed amendments potentially affect a large breadth of businesses and industries. By instituting uniform requirements across industries, the proposed amendments, if significantly costly compared to the size of the affected markets, could raise prices.

There is some potential for reduced compliance costs for users of solvent-contaminated wipes, however, which could result in impacts opposite those discussed above. Those businesses could experience a reduction in production costs, and a resulting increase in profits or pass-through of price reductions to their consumers.

**MITIGATION OF DISPROPORTIONATE IMPACT:**

Ecology considered all of the options listed in RCW 19.85.030(2), and included the following legal and feasible elements in the proposed amendments that reduce costs.

- **Solvent-contaminated wipes:** Adding conditional exemptions for solvent-contaminated wipes that could reduce compliance costs.
- **Labels and signs:**
  - Allowing flexibility in types of hazard labels.
  - Including examples of terms that can be used to describe waste hazards.
  - Setting requirements that could impose costs incrementally based on numbers of labels and signs, of which small businesses (as far as they are correlated with small operations) could have fewer.

In addition, ecology considered the alternative rule contents discussed in Chapter 6 of the associated regulatory analyses document, and excluded those elements that would have imposed excess compliance burden on businesses.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:**

Ecology involved small businesses and local government in its development of the proposed amendments, using:

- 2016 preproposal statement of inquiry (CR-101) announcement emails to:
  - DW-Rules listserv: 1098 recipients.
  - TurboWaste generators list: 2124 recipients.
  - Pharmaceutical stakeholders list: 42 recipients.
  - Environmental NGOs: Five recipients, including the Puget Soundkeeper Alliance, Toxic-Free Future, Washington Environmental Council.
- 2017 CR-101 announcement emails to:
  - DW-Rules listserv: 829 recipients.
  - TurboWaste generators list: 2223 recipients.
- Other listserv messages:
  - 2016 notice of informal ninety day comment period on draft rules.
  - Notice of 2016 interim pharmaceutical policy availability.
  - Notice of:
    - Interim pharmaceutical policy webinar.
    - Availability of webinar recording.
  - Notice of:
    - 2016 DW rule-making informational webinar.
    - Availability of webinar recording.
  - Notice of withdrawal of 2016 CR-101 and refile of new CR-101.
  - Notice of sixty day informal comment period start for second round of draft rules - 2017.
  - Invitation and reminders of 2017 DW rule-making webinar and two in-person public meetings.
  - Notice of availability of webinar recordings.
- Public meetings:
  - Webinar on DW draft rules - Nov. 2016: 168 attendees.
  - Webinar on updated DW draft rules - Nov. 2017.
  - In-person meeting at NWRO on updated DW draft rules - Nov. 2017.
  - In-person meeting at ERO on updated DW draft rules - Nov. 2017.
- ShopTalk article on DW rule making - Fall 2016.
- ShopTalk article on DW rule making - Spring 2017.

**NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:**

The proposed rule is likely to impact a broad range of DW facilities. These facilities are primarily in the following NAICS codes:

- 113310 Logging
- 115114 Postharvest Crop Activities (except Cotton Ginning)
- 221111 Hydroelectric Power Generation
- 221310 Water Supply and Irrigation Systems
- 236220 Commercial and Institutional Building Construction
- 238110 Poured Concrete Foundation and Structure Contractors
- 311513 Cheese Manufacturing
- 311710 Seafood Product Preparation and Packaging
- 321113 Sawmills
- 325320 Pesticide and Other Agricultural Chemical Manufacturing
- 325510 Paint and Coating Manufacturing
- 327212 Other Pressed and Blown Glass and Glassware Manufacturing
- 331313 Alumina Refining and Primary Aluminum Production
- 331524 Aluminum Foundries (except Die-Casting)
- 332322 Sheet Metal Work Manufacturing
- 332710 Machine Shops
- 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Service
- 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring
- 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing
- 336211 Motor Vehicle Body Manufacturing
- 336390 Other Motor Vehicle Parts Manufacturing
- 336411 Aircraft Manufacturing
- 336612 Boat Building
- 423120 Motor Vehicle Supplies and New Parts Merchant Wholesalers
- 423930 Recyclable Material Merchant Wholesalers
- 424130 Industrial and Personal Service Paper Merchant Wholesalers
- 424690 Other Chemical and Allied Products Merchant Wholesalers
- 424910 Farm Supplies Merchant Wholesalers
- 424950 Paint, Varnish, and Supplies Merchant Wholesalers
- 441110 New Car Dealers
- 441222 Boat Dealers
- 442299 All Other Home Furnishings Stores
- 444110 Home Centers
- 444120 Paint and Wallpaper Stores
- 444190 Other Building Material Dealers
- 445110 Supermarkets and Other Grocery (except Convenience) Stores
- 446110 Pharmacies and Drug Stores
- 447190 Other Gasoline Stations
- 448310 Jewelry Stores
- 452210 Department Stores

452311 Warehouse Clubs and Supercenters  
 452319 All Other General Merchandise Stores  
 481112 Scheduled Freight Air Transportation  
 482111 Line-Haul Railroads  
 484121 General Freight Trucking, Long-Distance,  
 Truckload  
 488390 Other Support Activities for Water Transporta-  
 tion  
 493110 General Warehousing and Storage  
 511210 Software Publishers  
 531120 Lessors of Nonresidential Buildings (except  
 Miniwarehouses)  
 532120 Truck, Utility Trailer, and RV (Recreational  
 Vehicle) Rental and Leasing  
 541380 Testing Laboratories  
 551114 Corporate, Subsidiary, and Regional Managing  
 Offices  
 562111 Solid Waste Collection  
 611110 Elementary and Secondary Schools  
 621210 Offices of Dentists  
 621493 Freestanding Ambulatory Surgical and Emer-  
 gency Centers  
 621498 All Other Outpatient Care Centers  
 621511 Medical Laboratories  
 622110 General Medical and Surgical Hospitals  
 811111 General Automotive Repair  
 811112 Automotive Exhaust System Repair  
 811118 Other Automotive Mechanical and Electrical  
 Repair and Maintenance  
 811121 Automotive Body, Paint, and Interior Repair and  
 Maintenance  
 811219 Other Electronic and Precision Equipment  
 Repair and Maintenance  
 811310 Commercial and Industrial Machinery and  
 Equipment  
 921190 Other General Government Support  
 922140 Correctional Institutions  
 922160 Fire Protection  
 924120 Administration of Conservation Programs  
 926120 Regulation and Administration of Transporta-  
 tion Programs

**IMPACT ON JOBS:**

We could not quantify the likely costs of the proposed amendments, due to uncertainty about:

- The number of generator and TSD containers, and above-ground tanks, with currently inadequate labels.
- The number of underground tanks and tank systems with currently inadequate or missing signage.

In jobs-impact estimation, ecology uses the Washington state office of financial management's 2007 Washington input-output model. The model accounts for interindustry impacts and spending multipliers of earned income and changes in output, including expenditures by industries that must comply with rules, and the income of industries that receive those payments.

Of the potentially impacted industries listed in Section 7.6, the largest job loss per one million dollars of compliance costs is Ambulatory Health Care Services (NAICS 621; loss of twenty-two jobs per \$1 million in costs). If costs were

exclusively incurred by Ambulatory Health Care Services (one of a wide breadth of potentially affected industries), and paid to replace labels and signs using services under Commercial Printing (except Screen and Books; NAICS 323111), each \$1 million of compliance costs would result in a net loss of eight jobs statewide. Note that job impacts are primarily borne by the industry incurring costs, but net statewide job impacts are the sum of multiple smaller increases and decreases across all industries in the state.

In other words, to cause the loss of one job statewide, making the most conservative assumption that costs are borne by the potentially affected industry with the highest jobs impact per dollar of cost, the proposed amendments would need to create a cost of nearly one hundred nineteen thousand dollars. For example, if ten inch squared hazard placards cost less than one dollar each, the proposed amendments would result in the loss of one job if the amendments resulted in the purchase of over one hundred nineteen thousand new placards. Label and sign prices would vary depending on the size of the label or sign, as well as the number purchased.

A copy of the statement may be obtained by contacting Robert Rieck, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6751, TTY see "assistance for persons with disabilities" above, email robert.rieck@ecy.wa.gov.

August 9, 2018

Polly Zehm

Deputy Director

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-016 Identifying solid waste.** (1) Purpose and applicability.

(a) The purpose of this section is to identify those materials that are and are not solid wastes.

(b)(i) The definition of solid waste contained in this section applies only to wastes that also are dangerous for purposes of the regulations implementing chapter 70.105 RCW. For example, it does not apply to materials (such as nondangerous scrap, paper, textiles, or rubber) that are not otherwise dangerous wastes and that are recycled.

(ii) This section identifies only some of the materials which are solid wastes and dangerous wastes under chapter 70.105 RCW. A material which is not defined as a solid waste in this section, or is not a dangerous waste identified or listed in this section, is still a solid waste and a dangerous waste for purposes of these sections if reason and authority exists under chapter 70.105 RCW and WAC 173-303-960. Within the constraints of chapter 70.105 RCW, this includes, but is not limited to, any material that: Is accumulated, used, reused, or handled in a manner that poses a threat to public health or the environment; or, due to the dangerous constituent(s) in it, when used or reused would pose a threat to public health or the environment.

(c) Certain materials are solid wastes but are excluded from the requirements of this chapter by WAC 173-303-071 and 173-303-073.

(2) The following terms are used and have the meanings as defined in WAC 173-303-040:

- (a) Boiler
  - (b) By-product
  - (c) Incinerator
  - (d) Industrial furnace
  - (e) Reclaim
  - (f) Recover
  - (g) Recycle
  - (h) Used or reused (see reuse or use)
  - (i) Sludge
  - (j) Scrap metal
  - (k) Spent material
  - (l) Excluded scrap metal
  - (m) Processed scrap metal
  - (n) Home scrap metal
  - (o) Prompt scrap metal
- (3) Definition of solid waste.

(a) A solid waste is any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under WAC 173-303-017(5).

(b) A discarded material is any material that is:

(i) Abandoned, as explained in subsection (4) of this section; or

(ii) Recycled, as explained in subsection (5) of this section; or

(iii) Considered inherently waste-like, as explained in subsection (6) of this section. Persons registering micronutrient or waste-derived fertilizers under chapter 15.54 RCW must submit information required by the department to indicate compliance with this chapter. The required minimum information is described in WAC 173-303-505; or

(iv) A military munition identified as a solid waste at WAC 173-303-578(2).

(4) Materials are solid waste if they are abandoned by being:

- (a) Disposed of; or
- (b) Burned or incinerated; or
- (c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(d) Sham recycled, as defined in subsection (8) of this section.

(5) Materials are solid wastes if they are recycled— or accumulated, stored, or treated before recycling—as specified in (a) through (d) of this subsection.

(a) Used in a manner constituting disposal. Materials noted with a "\*" in column 1 of Table 1 are solid wastes when they are:

- (i)(A) Applied to or placed on the land in a manner that constitutes disposal; or
- (B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in WAC 173-303-9903 or which exhibit any of the criteria or characteristics listed in WAC 173-303-090 or 173-303-100 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(b) Burning for energy recovery. Materials noted with a "\*" in column 2 of Table 1 are solid wastes when they are:

- (i) Burned to recover energy;
- (ii) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

However, commercial chemical products listed in WAC 173-303-9903 or which exhibit any of the criteria or characteristics listed in WAC 173-303-090 or 173-303-100 are not solid wastes if they are themselves fuels.

(c) Reclaimed. Materials noted with a "\*" in column 3 of Table 1 are solid wastes when reclaimed.

(d)(i) Accumulated speculatively. Materials noted with a "\*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

(ii) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practical, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under WAC 173-303-071 (3)(n) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

TABLE 1

|   | Use constituting disposal<br>WAC 173-303-016<br>(5)(a) | Energy recovery/<br>fuel<br>WAC 173-303-016<br>(5)(b) | Reclamation<br>WAC 173-303-016<br>(5)(c) | Speculative accumulation<br>WAC 173-303-016<br>(5)(d) |
|---|--|---|--|---|
| Spent materials   | (*)  | (*)   | (*)                                      | (*)   |
| Commercial chemical products  | (*)  | (*)   | —  | —   |
| By-products listed in WAC 173-303-9904  | (*)  | (*)   | (*)                                      | (*)   |
| Sludges listed in WAC 173-303-9904  | (*)  | (*)   | (*)                                      | (*)   |
| By-products exhibiting a characteristic <sup>1</sup> or criteria <sup>2</sup> | (*)  | (*)   | —  | (*)   |

|   | Use constituting disposal<br>WAC<br>173-303-016<br>(5)(a) | Energy recovery/<br>fuel<br>WAC<br>173-303-016<br>(5)(b) | Reclamation<br>WAC<br>173-303-016<br>(5)(c) | Speculative accumulation<br>WAC<br>173-303-016<br>(5)(d) |
|---|---|--|---|--|
| Sludges exhibiting a characteristic <sup>1</sup> or criteria <sup>2</sup> | (*)   | (*)  | —   | (*)  |
| Scrap metal that is not excluded under WAC 173-303-071 (3)(ff)            | (*)   | (*)  | (*)   | (*)  |

Note: The terms "spent materials," "sludges," "by-products," "scrap metal" and "processed scrap metal" are defined in WAC 173-303-040.

- 1 The characteristics of dangerous waste are described in WAC 173-303-090.
- 2 The dangerous waste criteria are described in WAC 173-303-100.

(6) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(a) Dangerous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(b) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a dangerous waste or are listed as a dangerous waste as defined in WAC 173-303-090 or 173-303-080 through 173-303-082, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in WAC 173-303-9905; and

(iii) The material is processed continually on site in the halogen acid furnace via direct conveyance (hard piping).

(c) The department will use the following criteria to add wastes to (a) of this subsection:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in WAC 173-303-9905 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health or the environment when recycled.

(7) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing chapter 70.105 RCW who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities

claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(8) Sham recycling. A material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in WAC 173-303-019.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-017 Recycling processes involving solid waste.**

(1) The purpose of this section is to identify those materials that are and are not solid wastes when recycled. Certain materials, as described in subsection (2) of this section, would not typically be considered to involve waste management and are exempt from the requirements of this chapter. All recycling processes not exempted by subsection (2) of this section are subject to the recycling requirements of WAC 173-303-120.

(2) General categories of materials that are not solid waste when recycled.

(a) Except as provided in subsection (3) of this section, materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

(b) Except as provided in subsection (3) of this section, the department has determined that the following materials when used as described are not solid wastes:

(i) Pulping liquors (e.g., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process;

(ii) Spent pickle liquor which is reused in wastewater treatment at a facility holding a national pollutant discharge elimination system (NPDES) permit, or which is being accumulated, stored, or treated before such reuse;

(iii) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in WAC 173-303-016 (5)(d)(ii).

(3) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (as described in subsection (2)(a) of this section):

(a) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(b) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(c) Materials accumulated speculatively as defined in WAC 173-303-016 (5)(d)(ii); or

(d) Materials listed in WAC 173-303-016(6); or

(e) Any materials that the department determines are being accumulated, used, reused or handled in a manner that poses a threat to public health or the environment.

(4) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing chapter 70.105 RCW who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(5) Variances from classification as a solid waste.

(a) In accordance with the standards and criteria in (b) of this subsection and the procedures in subsection (7) of this section, the department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(i) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in WAC 173-303-016 (5)(d)(ii));

(ii) Materials that are reclaimed and then reused within the original production process in which they were generated;

(iii) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(iv) Materials that are reclaimed in a continuous process;

(v) Materials that are indistinguishable in all relevant aspects from a product or intermediate; and

(vi) State-only dangerous materials (not regulated as hazardous wastes (defined in WAC 173-303-040) by EPA) which serve as an effective substitute for a commercial product or raw material.

(b) Standards and criteria for variances from classification as a solid waste.

(i) The department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision will be based on the following criteria:

(A) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(B) The reason that the applicant has accumulated the material for one or more years without recycling seventy-five percent of the volume accumulated at the beginning of the year;

(C) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(D) The extent to which the material is handled to minimize loss;

(E) Other relevant factors.

(ii) The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(A) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(B) The extent to which the material is handled before reclamation to minimize loss;

(C) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(D) The location of the reclamation operation in relation to the production process;

(E) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(F) Whether the person who generates the material also reclaims it;

(G) Other relevant factors.

(iii) The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed ((if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(A) The degree of processing the material has undergone and the degree of further processing that is required;

(B) The value of the material after it has been reclaimed;

(C) The degree to which the reclaimed material is like an analogous raw material;

(D) The extent to which an end market for the reclaimed material is guaranteed;

(E) The extent to which the reclaimed material, if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed hazardous secondary material for which the variance is sought is commodity-like will be based on whether the material is legitimately recycled as specified in WAC 173-303-019 and on whether all of the following decision criteria are satisfied:

(A) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the dangerous waste;

(B) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(C) Whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(D) Whether there is a market for the partially reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

(E) Whether the partially reclaimed material is handled to minimize loss; and

(F) Other relevant factors.

(iv) The department may grant requests for a variance from classifying as a solid waste those materials that serve as an effective substitute for a commercial product or raw material, when such material is not regulated as hazardous waste (defined in WAC 173-303-040) by EPA, if the materials are recycled in a manner such that they more closely resemble products or raw materials rather than wastes. This determination will be based on the following factors:

(A) The effectiveness of the material for the claimed use;

(B) The degree to which the material is like an analogous raw material or product;

(C) The extent to which the material is handled to minimize loss or escape to the environment;

(D) The extent to which an end market for the reclaimed material is guaranteed;

(E) The time period between generating the material and its recycling;

(F) Other factors as appropriate.

(6) Variance to be classified as a boiler.

In accordance with the standards and criteria in WAC 173-303-040 (definition of "boiler"), and the procedures in subsection (7) of this section, the department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in WAC 173-303-040, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

(7) Procedures for variances from classification as a solid waste or to be classified as a boiler.

The department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the department for the variance. The application must address the relevant criteria

contained in subsection((s)) (5)(b) or (6) of this section, as applicable.

(b) The department will evaluate the application and issue a draft public notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The department will accept comment on the tentative decision for thirty days, and may also hold a public hearing upon request or at its discretion. The department will issue a final decision after receipt of comments and after the hearing (if any).

(c) In the event of a change in circumstances that affect how a material meets the relevant criteria contained in subsection (5) or (6) of this section, as applicable, upon which a variance has been based, the applicant must send a description of the change in circumstances to the department. The department may issue a determination that the material continues to meet the relevant criteria of the variance or may require the facility to reapply for the variance.

(d) Variances shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must reapply for a variance. If a facility reapplies for a variance within six months, the facility may continue to operate under an expired variance until receiving a decision on their reapplication from the department.

(e) Facilities receiving a variance must provide notification as required by subsection (8) of this section.

(8) Notification requirements for materials managed under variances from classification as a solid waste.

(a) Facilities managing hazardous secondary materials under WAC 173-303-017(5) must send a notification prior to operating under the regulatory provision and by March 1st of each even-numbered year thereafter to the department using ecology's site identification form that includes the following information:

(i) The name, address, and EPA/state identification number (if applicable) of the facility;

(ii) The name and telephone number of a contact person;

(iii) The NAICS code of the facility;

(iv) The regulation under which the hazardous secondary materials will be managed;

(v) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(vi) A list of hazardous secondary materials that will be managed according to the regulation (reported as the dangerous waste numbers that would apply if the hazardous secondary materials were managed as dangerous wastes);

(vii) The quantity of each hazardous secondary material to be managed annually; and

(viii) The certification (included in ecology's site identification form) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials under this section has submitted a notification, but then subsequently stops managing those materials in accordance with the regulation(s) listed above, the facility must notify the department within thirty days using ecology's site identification form. For purposes of this section, a facility has stopped managing hazardous secondary materials under this section if

the facility no longer generates, manages, or reclaims materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials under this section for at least one year.

#### NEW SECTION

**WAC 173-303-019 Legitimacy criteria for recycling of hazardous secondary materials.** Recycling hazardous secondary materials for the purpose of exclusion or exemption from the dangerous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this section.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(a) Contributes valuable ingredients to a product or intermediate; or

(b) Replaces a catalyst or carrier in the recycling process; or

(c) Is the source of a valuable constituent recovered in the recycling process; or

(d) Is recovered or regenerated by the recycling process; or

(e) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(a) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process; or

(b) Sold to a third party.

(3) The generator, recycler, or third party must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(a) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(i) The product of the recycling process does not exhibit a dangerous waste characteristic (as defined in WAC 173-303-090) or meet any dangerous waste criteria (as found in WAC 173-303-100) that analogous products do not exhibit; and

(ii) The concentrations of any dangerous constituents found in WAC 173-303-9905 that are in the product or intermediate are at levels that are comparable to or lower than

those found in analogous products, or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those dangerous constituents.

(b) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(i) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals); or

(ii) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(c) If the product of the recycling process has levels of dangerous constituents (found in WAC 173-303-9905) that are not comparable to or unable to be compared to a legitimate product or intermediate per subsection (1)(d)(i) or (ii) of this section, the recycling still may be shown to be legitimate if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate.

(i) The recycling can be shown to be legitimate based on:

(A) Lack of exposure from toxics in the product;

(B) Lack of bioavailability of toxics in the product; or

(C) Other relevant considerations which show that the recycled product does not contain levels of dangerous constituents that pose a significant human health or environmental risk.

(ii) The documentation must include a certification statement that the recycling is legitimate and must be maintained on site for five years after the recycling operation has ceased.

(ii) The person performing the recycling must notify the department of this activity using ecology's site identification form.

**AMENDATORY SECTION** (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-030 Abbreviations.** The following abbreviations are used in this regulation.

APTI - Association for Preservation Technology International

ASTM - American Society for Testing Materials

APHA - American Public Health Association

CAMU - corrective action management unit

CDC - Center for Disease Control

C.F.R. - Code of Federal Regulations

DOT - Department of Transportation

°C - degrees Celsius

DRE - destruction and removal efficiency

DW - dangerous waste

DWS - drinking water standards of the Safe Drinking Water Act

EHW - extremely hazardous waste

EP - extraction procedure

EPA - Environmental Protection Agency

°F - degrees Fahrenheit

g - gram  
 IARC - International Agency for Research on Cancer  
 IFC - International Fire Code  
 kg - kilogram (one thousand grams)  
 L - liter  
 lb - pound  
 LC<sub>50</sub> - median lethal concentration  
 LD<sub>50</sub> - median lethal dose  
 MACT - maximum achievable control technology  
 M - molar (gram molecular weights per liter of solution)  
 mg - milligram (one thousandth of a gram)  
MTCA - Model Toxics Control Act  
 NFPA - National Fire Protection Association  
 NIOSH - National Institute for Occupational Safety and Health

## Health

pH - negative logarithm of the hydrogen ion concentration  
 PODC - principal organic dangerous constituent  
 POTW - publicly owned treatment works  
 ppm - parts per million (weight/weight)  
 RCRA - Resource Conservation and Recovery Act  
 RCW - Revised Code of Washington  
 TEQ - toxicity equivalence  
TMC - total mass concentrate  
TOM - total organic mass  
 TSD facility (or TSDF) - treatment, storage, or disposal facility  
 TU - temporary unit  
 UBC - Uniform Building Code  
 UFC - Uniform Fire Code  
 USCG - United States Coast Guard  
 USGS - United States Geological Survey  
 WAC - Washington Administrative Code  
 % - percent  
 # - number

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-040 Definitions.** When used in this chapter, the following terms have the meanings given below.

Note: The list of defined terms in this section does not contain all defined terms used in chapter 173-303 WAC.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Accumulation" refers to the definition of "storage."

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 C.F.R. Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - The terms acute and acutely are used interchangeably.

"Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal (~~(on-site)) on site~~, or to a point of shipment for disposal (~~(off-site)) off site~~.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

"Authorized representative" means the person responsible for the overall operation of a generator site, facility, or an operational unit (e.g., plant manager or superintendent).

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy

directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Central accumulation area" means any on-site dangerous waste accumulation area subject to either WAC 173-303-200 (large quantity generators) or WAC 173-303-172 (medium quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under WAC 173-303-235 must also comply with WAC 173-303-235(12) when accumulating unwanted material and/or dangerous waste.

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means:

- The requirements placed upon all recycling, used oil, and TSD facilities, plus some generators, and some transport-

ers to ensure that all such facilities are closed in an acceptable manner (see also "post-closure"); and

- Once taken out of service, the proper cleaning up and/or decontaminating of a dangerous waste management unit or a recycling unit and any areas affected by releases from the unit.

"College/university" see WAC 173-303-235.

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act, chapter 70.105 RCW, and Hazardous waste fees, chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Contained" means held in a unit that meets the following criteria:

- The unit is in good condition with no leaks or other continuing or intermittent unpermitted releases of hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

- The unit is properly labeled or otherwise has a system (such as a log book) to immediately identify the hazardous secondary materials in the unit; and

- The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

- Hazardous secondary materials in units that meet the applicable requirements of WAC 173-303-280 through 173-303-395 or 173-303-400 are presumptively contained.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Control" means, for the purposes of WAC 173-303-171 (1)(e) and 173-303-200(15), the power to direct the policies of the generator, whether by the ownership of stock or voting rights. Contractors, consultants, and transporters who operate generator facilities on behalf of a different person, as defined in this section, shall not be deemed to "control" such generators.

"Corrosion expert" means a person who, by reason of (~~his~~) their knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

- Receiving broken or intact CRTs; and
- Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the

largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 C.F.R. Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been treated to the standards provided by 40 C.F.R. 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal Rabbit LD<sub>50</sub>" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half or more of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means:

- A dangerous waste treatment, storage, disposal, or recycling facility that:

- Has received a permit (or interim status) in accordance with the requirements of this chapter,

- Has received a permit (or interim status) from another state authorized in accordance with 40 C.F.R. Part 271,

- Has received a permit (or interim status) from EPA in accordance with 40 C.F.R. Part 270,

- Has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and

- That has been designated on the manifest pursuant to WAC 173-303-180(1).

- "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with WAC 173-303-370 (5)(f).

- If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

• The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080 through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other substances.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or ~~(his)~~ their designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drip-page from treated wood, precipitation, and surface water runoff to an associated collection system at wood preserving plants.

"Electronic manifest (or e-Manifest)" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-2A (Continuation Sheet).

"Electronic Manifest System (or e-Manifest System)" means EPA's national information technology system through which the electronic manifest may be obtained, com-

pleted, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

"Electronic signature" is defined in RCW 19.34.020.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Eligible academic entity" see WAC 173-303-235.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 C.F.R. 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, groundwater monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(e), 173-303-645 (1)(~~e~~) (f), or 173-303-620 (1)(d) or, as incorporated by reference at WAC 173-303-400, 40 C.F.R. 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or groundwater.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each generator, transporter, and TSD facility.

"Episodic event" see WAC 173-303-173.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 C.F.R. Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Export" means the transportation of hazardous waste from a location under the jurisdiction of the United States to another country, or a location not under the jurisdiction of any country, for the purpose of recovery, treatment, or disposal operations therein.

"Exporter," also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with 40 C.F.R. Part 262.83(d) or the manifest for a shipment of hazardous waste in accordance with 40 C.F.R. Part 262, Subpart B, or equivalent state provision specifies a foreign receiving facility as the facility the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous waste to recovery, treatment, or disposal in the country of import.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used

in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

- All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, ~~((or))~~ disposing of dangerous waste, or managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility," or "waste management facility" are used interchangeably.

- For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020(8).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent or more of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (*Pimephales promelas*), and other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110 (3)(b)(i), coho salmon (*Oncorhynchus kisutch*), rainbow trout (*Oncorhynchus mykiss*), or brook trout (*Salvelinus fontinalis*) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Formal written affiliated agreement" see WAC 173-303-235.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Groundwater" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 C.F.R. Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for Designating Dangerous Waste*, Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, sludge, or commercial chemical product) that, when discarded, would be identified as a dangerous waste under this chapter.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this definition, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 C.F.R. Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 C.F.R. Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste that is unsuitable for:

- Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or
- Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

(See appendix V of 40 C.F.R. Parts 264 and 265 for examples.)

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns; phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant

heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Inhalation Rat LC<sub>50</sub>" means a concentration in milligrams of substance per liter of air (mg/L) which, when administered to the respiratory tract for one hour or more, kills within fourteen days half or more of a group of ten rats each weighing between 200 and 300 grams.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of ~~(his)~~ their knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)~~((e))~~ (e), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Laboratory" see WAC 173-303-235 only.

"Laboratory clean-out" see WAC 173-303-235.

"Laboratory worker" see WAC 173-303-235.

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil

surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity generator" means a generator who generates any of the following amounts in a calendar month:

(a) Greater than or equal to 2,200 lb (1,000 kg) of dangerous waste that is not acute hazardous waste (AHW) or WT01 extremely hazardous waste (EHW); or

(b) Greater than 2.2 lb (1 kg) of acute hazardous waste and/or WT01 EHW; or

(c) Greater than 220 lb (100 kg) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste and/or WT01 EHW.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste (batteries, mercury-containing equipment, and lamps calculated collectively) or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (that is, passes the Paint Filter Test Method 9095B as described in *Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods*" EPA Publication SW-846 as incorporated by reference in WAC 173-303-110 (3)(a)) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A~~((;))~~), or the electronic manifest originated and signed by the generator or offeror in accordance with the requirements of WAC

173-303-180 (Manifest), and the applicable requirements of WAC 173-303-170 through 173-303-692.

"Manifest tracking number" means the alphanumeric identification number (a unique three letter suffix preceded by nine numerical digits), that is preprinted in Item 4 of the Manifest by a registered source.

"Manufacturing process unit" means a unit which is an integral and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Medium quantity generator" means a generator who generates the following amounts in a calendar month:

(a) Greater than 220 lb (100 kg) but less than 2,200 lb (1,000 kg) of dangerous waste that is not AHW and/or WT01 extremely hazardous waste (EHW);

(b) Less than or equal to 2.2 lb (1 kg) of AHW and/or WT01 EHW; and

(c) Less than or equal to 220 lb (100 kg) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste and/or WT01 EHW.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function. Examples of mercury-containing equipment include thermostats, thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and

chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a non-radioactive hazardous component and, as defined by 10 C.F.R. 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 C.F.R. 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 C.F.R. Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"No free liquids" as used in WAC 173-303-071 (3)(rr) and (ss), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes.

"Nonprofit research institute" see WAC 173-303-235.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral Rat LD<sub>50</sub>" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within fourteen days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 C.F.R. Part 270; or

Another state authorized by EPA, pursuant to 40 C.F.R. Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days)

in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

"Personnel or facility personnel" means all persons who work at, or oversee the operations of, a dangerous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of WAC 173-303-400 or 173-303-280 through 173-303-395 and 173-303-600 through 173-303-695.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of agriculture may declare to be a pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

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

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point of generation" means the point, including both the date and place, a material is first identified as a solid waste under this chapter 173-303 WAC.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo [(a,e), (a,h), (a,i), and (a,l)] pyrenes, and dibenzo(a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive acutely hazardous unwanted material" see WAC 173-303-235.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of waste destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the waste.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and

secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 C.F.R. Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 C.F.R. Part 261; or

The date six months after a waste is newly identified by amendments to 40 C.F.R. Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020(32).

"Remediation waste" means all solid and dangerous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

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

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

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

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

"Satellite accumulation area" means a location at or near any point of generation where (~~hazardous~~) dangerous waste is initially accumulated in containers (during routine opera-

tions) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity generator" means a generator who generates less than or equal to the following amounts in a calendar month:

• 220 lb (100 kg) of dangerous waste that is not acute hazardous waste and/or WT01 EHW;

• 2.2 lb (1 kg) of acute hazardous waste and/or WT01 EHW; and

• 220 lb (100 kg) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste and/or WT01 EHW.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Solvent-contaminated wipe" means:

(a) A wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents listed in WAC 173-303-082 or the corresponding P- or U- listed solvents found in WAC 173-303-081;

(ii) Exhibits a dangerous waste characteristic found in WAC 173-303-090 when that characteristic results from a solvent listed in WAC 173-303-080;

(iii) Exhibits only the dangerous waste characteristic of ignitability found in WAC 173-303-090(5) due to the presence of one or more solvents that are not listed in WAC 173-303-080; or

(iv) Designates only for dangerous waste criteria found in WAC 173-303-100 and is not designated by 40 C.F.R. Part 261.

(b) Solvent-contaminated wipes that contain listed dangerous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at WAC 173-303-071 (3)(rr) and (ss).

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 C.F.R. Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing, remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities. Staging piles must be designated by the department according to the requirements of WAC 173-303-64690.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 C.F.R. Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, ~~((is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201))~~ is storage of dangerous waste and can be managed under the applicable conditions for exemption of WAC 173-303-170 (2)(b).

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

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

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Teaching hospital" see WAC 173-303-235.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or (20)(b)(ii).

"TLM<sub>96</sub>" means the same as "Aquatic LC<sub>50</sub>."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Trained professional" see WAC 173-303-235.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas,

buildings, piers, and other similar areas where shipments of dangerous waste or hazardous secondary materials are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground source of drinking water" (USDW) means an aquifer or its portion:

- Which supplies any public water system or contains a sufficient quantity of groundwater to supply a public water system; and currently supplies drinking water for human consumption or contains fewer than 10,000 mg/l total dissolved solids; and
- Which is not an exempted aquifer.

"USDW" means underground source of drinking water.

"Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise pre-

pared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Mercury-containing equipment as described in WAC 173-303-573(3); and

Lamps as described in WAC 173-303-573(5).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding groundwater to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"User of the electronic manifest system" means a dangerous waste generator, a dangerous waste transporter, an owner or operator of a dangerous waste treatment, storage, recycling or disposal facility, or any other person that:

• Is required to use a manifest to comply with:

- Any federal or state requirement to track the shipment, transportation, and receipt of dangerous waste or other waste material that is shipped from the site of generation to an off-

site designated facility for treatment, storage, recycling or disposal; or

- Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

• Elects to use the system to obtain, complete, and transmit an electronic manifest format supplied by the EPA electronic manifest system; or

• Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such paper copy), in accordance with WAC 173-303-370 (2)(e). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

"Unwanted material" see WAC 173-303-235.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Weekly inspections" means at least once during the period from Sunday to Saturday.

"Wipe" means a woven or nonwoven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

"Working container" see WAC 173-303-235.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to groundwater or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in Title 40 C.F.R. Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the

singular include the plural, and words in the plural include the singular.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-045 References to EPA's hazardous waste and permit regulations.** (1) Any references in this chapter to any parts, subparts, or sections from EPA's hazardous waste regulations, including 40 C.F.R. Parts 260 through 280 and Part 124, are in reference to those rules as they existed on (~~(June 30, 2013)~~) July 1, 2017. Copies of the appropriate referenced federal requirements are available upon request from the department.

(2) The following sections and any cross-reference to these sections are not incorporated or adopted by reference because they are provisions that EPA cannot delegate to states:

- (a) 40 C.F.R. Parts 260.1 (b)(4)-(6).
- (b) 40 C.F.R. Parts 264.1 (d) and (f); 265.1 (c)(4); 264.149-150 and 265.149-150; 264.301(l); and 265.430.
- (c) 40 C.F.R. Parts 268.5 and 268.6; 268 Subpart B; 268.42(b) and 268.44 (a) through (g).
- (d) 40 C.F.R. Parts 270.1 (c)(1)(i); 270.3; 270.60(b); and 270.64.
- (e) 40 C.F.R. Parts 124.1 (b)-(e); 124.4; 124.5(e); 124.9; 124.10 (a)(1)(iv); 124.12(e); 124.14(d); 124.15 (b)(2); 124.16; 124.17(b); 124.18; 124.19; and 124.21.

(3) The following sections and any cross-references to these citations are not incorporated or adopted by reference: 40 C.F.R. Parts 260.20-260.22.

(4) Where EPA's regulations are incorporated by reference:

- (a) "Regional administrator" means "the department."
- (b) "Administrator" means "director."
- (c) "Director" means "department."
- (d) "40 C.F.R. 260.11" means "WAC 173-303-110(3)."
- (e) These substitutions should be made as appropriate. They should not be made where noted otherwise in this chapter. They should not be made where another EPA region is referred to, where a provision cannot be delegated to the state, or where the director referred to is the director of another agency.

**AMENDATORY SECTION** (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

**WAC 173-303-060 Notification (~~and~~), identification numbers, and annual reports.** (1) Any person who generates, transports, offers for transport, or transfers a dangerous waste, or who owns or operates a dangerous waste TSD facility or a recycling facility must have a current EPA/state identification number (EPA/state ID#). An EPA/state ID# is issued to TSD facilities, recycling facilities, and generators by site. A state registration number is assigned to transfer facilities by site. Any person who offers a dangerous waste to a transporter or to a dangerous waste TSD facility or recy-

cling facility that does not have an EPA/state ID#, or whose EPA/state ID# has been (~~cancelled~~) cancelled or withdrawn, is in violation of this regulation.

(2) Every person who must have an EPA/state ID#, and who has not already received their ID#, must notify the department by obtaining and completing a Washington State Dangerous Waste Site Identification Form according to the instructions on the form and submitting the completed form to the department. Any person already assigned an EPA/state ID# must notify the department of any changes to their company's name, mailing address, ownership, physical location, or type of dangerous waste activity, by submitting a revised form. A revised form must be submitted prior to adding or dropping any of the following activities: Permitted treating, storing and/or disposing, immediate recycling, transporting, permit by rule, and/or treatment by generator. Any change in site location will require the issuance of a new EPA/state ID# for waste generation and management facilities. An existing EPA/state ID# (~~(may not be used at)~~) cannot be transferred to a new company location((s)). A company that has obtained an ID# as a "transporter only" (e.g., those who do not store or generate waste on site) can move to a new location and continue to use the same ID#. A revised Dangerous Waste Site Identification Form must be submitted to the department. A Dangerous Waste Site Identification Form and instructions for its completion may be obtained by contacting the department.

(3) Any person with an EPA/state ID# may request that (~~his~~) their ID# be withdrawn if (~~he~~) they will no longer be handling dangerous waste at the site the ID# has been assigned to. Any person whose ID# has been withdrawn must notify the department before (~~he uses~~) they use the ID# at any later date. Notification must be in writing, except in the case of emergencies (e.g., fires, spills, etc.) such notification may be provided by telephone first, and followed within one week by a written notification. Withdrawal will only be granted when all applicable requirements of this chapter and chapter 173-305 WAC have been met.

(4) Any person with an EPA/state ID# may request that (~~his~~) their ID# be (~~cancelled if he~~) withdrawn if they will no longer occupy the site. Notification must be in writing. An EPA/state ID# will be considered (~~cancelled~~) withdrawn only after all applicable requirements of this chapter and chapter 173-305 WAC have been met.

(5) Any person with a current EPA/state ID# must submit an annual report as required by WAC (~~(173-303-070(8))~~) 173-303-170 (2)(a)(i), 173-303-220, (~~and~~) 173-303-120, 173-303-390, and 173-303-515. Any person who has withdrawn (~~or cancelled~~) their ID# must submit an annual report up to the effective date of (~~cancellation or~~) withdrawal. The generator should write the effective date on the Dangerous Waste Site Identification Form for the (~~cancellation or~~) withdrawal; it is the date by which all regulated waste activities (generation, transportation, and management) have ceased at the site.

(6) A recognized trader must not arrange for import or export of dangerous waste without having received an EPA/state ID# from the department.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-070 Designation of dangerous waste.**

(1) Purpose and applicability.

(a) This section describes the procedures for determining whether or not a solid waste is DW or EHW.

(b) The procedures in this section are applicable to any person who generates a solid waste, as defined in WAC 173-303-016(1) (including recyclable materials) that is not exempted or excluded by this chapter, or by the department, or who discovers an unknown material, or who is directed to or must further designate waste by subsection (4) or (5) of this section. Any person who generates a solid waste or discovers an unknown material must ~~((determine))~~ make an accurate determination if that waste or unknown material is a dangerous waste in order to ensure wastes are properly managed according to applicable dangerous waste regulations. A dangerous waste determination is made by following the designation procedures set forth in subsection (3) of this section. Any person who determines by these procedures that their waste is designated DW or EHW is subject to all applicable requirements of this chapter.

~~((c) The requirements for the small quantity generator exemption are found in subsection (8) of this section.))~~

(2)(a) Except as provided at WAC 173-303-070 (2)(c), once a material has been determined to be a dangerous waste, then any solid waste generated from the recycling, treatment, storage, or disposal of that dangerous waste is a dangerous waste unless and until:

(i) The generator has been able to accurately describe the variability or uniformity of the waste over time, and has been able to obtain demonstration samples which are representative of the waste's variability or uniformity; and

(ii)(A) It does not exhibit any of the characteristics of WAC 173-303-090; however, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of WAC 173-303-140 (2)(a), even if they no longer exhibit a characteristic at the point of land disposal; and

(B) If it was a listed waste under WAC 173-303-080 through 173-303-083, it also has been exempted pursuant to WAC 173-303-910(3); or

(iii) If originally designated only through WAC 173-303-100, it does not meet any of the criteria of WAC 173-303-100. Such solid waste will include, but not be limited to, any sludge, spill residue, ash emission control dust, leachate, or precipitation runoff. Precipitation runoff will not be considered a dangerous waste if it can be shown that the runoff has not been contaminated with the dangerous waste, or that the runoff is adequately addressed under existing state laws (e.g., chapter 90.48 RCW), or that the runoff does not exhibit any of the criteria or characteristics described in WAC 173-303-100.

(b) Materials that are reclaimed from solid wastes and that are used beneficially (as provided in WAC 173-303-016 and 173-303-017) are not solid wastes and hence are not dangerous wastes under this section unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(c)(i) A dangerous waste that is listed in WAC 173-303-081(1) or 173-303-082(1) solely because it exhibits one or more characteristics of ignitability as defined under WAC 173-303-090(5), corrosivity as defined under WAC 173-303-090(6), or reactivity as defined under WAC 173-303-090(7) is not a dangerous waste, if the waste no longer exhibits any characteristic of dangerous waste identified in WAC 173-303-090 or any criteria identified in WAC 173-303-100.

(ii) The exclusion described in (c)(i) of this subsection also pertains to:

(A) Any solid waste generated from treating, storing, or disposing of a dangerous waste listed in WAC 173-303-081(1) or 173-303-082(1) solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under (a) and (b) of this section.

(B) Wastes excluded under this section are subject to 40 C.F.R. Part 268, which is incorporated by reference at WAC 173-303-140 (2)(a) (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(3) Designation procedures.

(a) The dangerous waste designation for each solid waste must begin immediately at the point of waste generation or upon the discovery of an unknown material. This must be done before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the solid waste or dangerous waste classification of the waste may change.

(b) A person must determine whether the solid waste is excluded from regulation under WAC 173-303-071.

(c) A person must check each section, in the order set forth in (d) of this subsection, to determine whether the waste is designated as a dangerous waste. When the waste is determined to be a dangerous waste following the steps in (d)(i) through (iii) of this subsection, further designation is not required except as required by subsection (4) or (5) of this section. If a person has checked the waste against each section and the waste is not designated, then the waste is not subject to the requirements of this chapter 173-303 WAC.

Any person who wishes to seek an exemption for a waste which has been designated DW or EHW must comply with the requirements of WAC 173-303-072.

(d) To determine whether or not a solid waste is designated as a dangerous waste a person must:

(i) First, determine if the waste is a listed discarded chemical product, WAC 173-303-081;

(ii) Second, determine if the waste is a listed dangerous waste source, WAC 173-303-082;

(iii) Third, ~~((if the waste is not listed in WAC 173-303-081 or 173-303-082, or for the purposes of compliance with the federal land disposal restrictions as adopted by reference in WAC 173-303-140,))~~ determine if the waste also exhibits ~~((any))~~ one or more dangerous waste characteristics, WAC 173-303-090; and

(iv) Fourth, if the waste is not listed in WAC 173-303-081 or 173-303-082, and does not exhibit a characteristic in WAC 173-303-090, determine if the waste meets ~~((any))~~ one or more dangerous waste criteria, WAC 173-303-100.

~~((b) A person must check each section, in the order set forth, until they determine whether the waste is designated as a dangerous waste. Once the waste is determined to be a dangerous waste, further designation is not required except as required by subsection (4) or (5) of this section. If a person has checked the waste against each section and the waste is not designated, then the waste is not subject to the requirements of chapter 173-303 WAC.~~

~~Any person who wishes to seek an exemption for a waste which has been designated DW or EHW must comply with the requirements of WAC 173-303-072.~~

~~(e)) (e) For the purpose of determining if a solid waste is a dangerous waste as identified in WAC 173-303-080 through 173-303-100, a person must either:~~

~~(i) Test the waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110; or~~

~~(ii) Apply knowledge of the waste in light of the materials or the process used, when:~~

~~(A) Such knowledge can be demonstrated to be sufficient for determining whether or not it designated and/or designated ~~((properly))~~ accurately; and~~

~~(B) All data and records supporting this determination in accordance with WAC 173-303-210(3) are retained on-site; and~~

~~(C) When available knowledge is inadequate or absent to make an accurate designation, the generator must test the waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110.~~

~~(f) Persons testing their waste must obtain a representative sample of the waste for the testing set forth in WAC 173-303-110.~~

~~(g) Test results from properly performed test methods specified in WAC 173-303-090 and 173-303-100 are definitive for determining the designation and regulatory status of the waste.~~

(4) Testing required. Notwithstanding any other provisions of this chapter, the department may require any person to test a waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110 to determine whether or not the waste is designated under the dangerous waste lists, characteristics, or criteria, WAC 173-303-080 through 173-303-100. Such testing may be required if the department has reason to believe that the waste would be designated DW or EHW by the dangerous waste lists, characteristics, or criteria, or if the department has reason to believe that the waste is designated improperly (e.g., the waste has been designated DW but should actually be designated EHW). If a person, pursuant to the requirements of this subsection, determines that the waste is a dangerous waste or that its designation must be changed, then they are subject to the applicable requirements of this chapter 173-303 WAC. The department will base a requirement to test a waste on evidence that includes, but is not limited to:

(a) Test information indicating that the person's waste may be DW or EHW;

(b) Evidence that the person's waste is very similar to another persons' already designated DW or EHW;

(c) Evidence that the persons' waste has historically been a DW or EHW;

(d) Evidence or information about a person's manufacturing materials or processes which indicate that the wastes may be DW or EHW; or

(e) Evidence that the knowledge or test results a person has regarding a waste is not sufficient for determining whether or not it designated and/or designated ~~((properly))~~ accurately.

(5) Additional designation required. A generator must manage dangerous waste under the most stringent management standards that apply. The following subsections describe how waste that has been designated as DW under the dangerous waste lists, WAC 173-303-080 through 173-303-082, or characteristics, WAC 173-303-090, or in the case of (c) of this subsection, under the lists, characteristics, or criteria, must be further designated under the dangerous waste criteria, WAC 173-303-100. This further designation under the criteria is necessary because it may change how the waste must be managed. Additional designation is required when:

(a) The waste is designated as DW with a QEL of 220 pounds and the generator otherwise qualifies as a small quantity generator. In this case, a generator must determine if their DW is also designated as a toxic EHW, WAC 173-303-100, with a QEL of 2.2 pounds; or

(b) The waste is designated as DW and the waste is to be discharged to a POTW operating under WAC 173-303-802(4) (Permits by rule). In this case, a generator must determine if the waste is also an EHW under WAC 173-303-100; or

(c) The waste is designated as a state-only DW and the waste is to be:

(i) Burned for energy recovery, as used oil, under the provisions of WAC 173-303-515; or

(ii) Land disposed within the state. In this case, a generator must determine if the waste is also an EHW under WAC 173-303-100.

(6) Dangerous waste numbers. When a person is designating, reporting, or keeping records on a dangerous waste, they must use all the dangerous waste numbers which they know are assignable to the waste from the dangerous waste lists, characteristics, or criteria. For example, if the waste is ignitable *and* contains more than 5 mg/l leachable lead when tested for the toxicity characteristic, they must use the dangerous waste numbers of D001 and D008. This will not be construed as requiring a person to designate their waste beyond those designation requirements set forth in subsections ~~(2)((-3), (4), and))~~ through (5) of this section.

~~((7) Quantity exclusion limits; aggregated waste quantities.~~

~~(a) Quantity exclusion limits. In each of the designation sections describing the lists, characteristics, and criteria, quantity exclusion limits (QEL) are identified. The QEL are used to distinguish when a dangerous waste is only subject to the small quantity generator provisions, and when a dangerous waste is subject to the full requirements of this chapter. Any solid waste which is not excluded or exempted and which is listed by or exhibits the characteristics or meets the criteria of this chapter is a dangerous waste. Small quantity generators who produce dangerous waste below the QEL are subject to the requirements described in subsection (8) of this section.~~

(b) ~~Aggregated waste quantities. A person may be generating, accumulating, or storing more than one kind of dangerous waste. In such cases, they must consider the aggregate quantity of their wastes when determining whether or not their waste amounts exceed the specific limits for waste accumulation or the specific quantity exclusion limits (QEL) for waste generation. Waste quantities must be aggregated for all wastes with common QELs. Example: If a person generates 100 pounds of an ignitable waste and 130 pounds of a persistent waste, then both wastes are regulated because their aggregate waste quantity (230 pounds) exceeds their common QEL of 220 pounds. On the other hand, if a person generates one pound of a toxic EHW and 218 pounds of a corrosive waste, their quantities would not be aggregated because they do not share a common QEL (2.2 pounds and 220 pounds, respective QELs). (Note: In order to remain a small quantity generator, the total quantity of dangerous waste generated in one month, all DW and EHW regardless of their QELs, must not equal or exceed 220 pounds. Not more than 2.2 pounds of a waste with a 2.2 pound QEL may be part of that total.)~~

(c) ~~When making the quantity determinations of this subsection and WAC 173-303-170 through 173-303-230, generators must include all dangerous wastes they generate, except dangerous waste that:~~

~~(i) Is exempt from regulation under WAC 173-303-071; or~~

~~(ii) Is recycled under WAC 173-303-120 (2)(a), (3)(c), (e), (h) or (5); or~~

~~(iii) Is managed in accordance with WAC 173-303-802(5) immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in WAC 173-303-040; or~~

~~(iv) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under WAC 173-303-120 (4)(a); or~~

~~(v) Is spent lead acid batteries managed under the requirements of WAC 173-303-120 (3)(f) and 173-303-520; or~~

~~(vi) Is universal waste managed under WAC 173-303-077 and 173-303-573; or~~

~~(vii) Is a dangerous waste that is an unused commercial chemical product (listed in WAC 173-303-9903 or exhibiting one or more characteristics or criteria listed in WAC 173-303-090 or 173-303-100) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to WAC 173-303-235(14). For purposes of this provision, the term eligible academic entity shall have the meaning as defined in WAC 173-303-235(1).~~

~~(d) In determining the quantity of dangerous waste generated, a generator need not include:~~

~~(i) Dangerous waste when it is removed from on-site storage; or~~

~~(ii) Reserve; or~~

~~(iii) Spent materials that are generated, reclaimed, and subsequently reused on-site, as long as such spent materials have been counted once (Note: If after treatment or reclamation a residue is generated with a different waste code(s), that residue must be counted); or~~

~~(iv) The container holding/containing the dangerous waste as described under WAC 173-303-160(1).~~

~~(8) Small quantity generators:~~

~~(a) A person is a small quantity generator and subject to the requirements of this subsection if:~~

~~(i) Their waste is dangerous waste under subsection (3) of this section, and the quantity of waste generated per month (or the aggregated quantity if more than one kind of waste is generated) does not equal or exceed the quantity exclusion limit (QEL) for such waste (or wastes) as described in WAC 173-303-070(7); and~~

~~(ii) The quantity accumulated or stored does not exceed 2200 pounds for wastes with a 220 pound QEL and 2.2 pounds for waste with a 2.2 pound QEL. (Exception: The accumulation limit for the acute hazardous wastes described in WAC 173-303-081 (2)(iv) and 173-303-082 (2)(b) is 220 lbs); and~~

~~(iii) The total quantity of dangerous waste generated in one month, all DW and EHW regardless of their QELs, does not equal or exceed 220 pounds. If a person generates any dangerous wastes that exceed the QEL or accumulates or stores waste that exceeds the accumulation limits, then all dangerous waste generated, accumulated, or stored by that person is subject to the requirements of this chapter. A small quantity generator who generates in excess of the quantity exclusion limits or, accumulates, or stores waste in excess of the accumulation limits becomes subject to the full requirements of this chapter and cannot again be a small quantity generator until after all dangerous waste on-site at the time he or she became fully regulated have been removed, treated, or disposed.~~

~~Example. If a person generates four pounds of an acute hazardous waste discarded chemical product (QEL is 2.2 pounds) and 200 pounds of an ignitable waste (QEL is 220 pounds), then both wastes are fully regulated, and the person is not a small quantity generator for either waste.~~

~~(Comment: If a generator generates acute hazardous waste in a calendar month in quantities greater than the QELs, all quantities of that acute hazardous waste are subject to full regulation under this chapter. "Full regulation" means the regulations applicable to generators of 2200 pounds or greater of dangerous wastes in a calendar month.)~~

~~(b) Small quantity generators will not be subject to the requirements of this chapter if they:~~

~~(i) Designate their waste in accordance with WAC 173-303-070; and~~

~~(ii) Manage their waste in a way that does not pose a potential threat to human health or the environment; and~~

~~(iii) Either treat or dispose of their dangerous waste in an on-site facility, or ensure delivery to an off-site facility, either of which, if located in the United States, is:~~

~~(A) Permitted (including permit by rule, interim status, or final status) under WAC 173-303-800 through 173-303-840;~~

~~(B) Authorized to manage dangerous waste by another state with a hazardous waste program approved under 40 C.F.R. Part 271, or by EPA under 40 C.F.R. Part 270;~~

~~(C) Permitted to manage moderate-risk waste under chapter 173-350 WAC (Solid waste handling standards); operated in accordance with state and local regulations, and~~

consistent with the applicable local hazardous waste plan that has been approved by the department;

~~(D) A facility that beneficially uses or reuses, or legitimately recycles or reclaims the dangerous waste, or that treats the waste prior to such recycling activities;~~

~~(E) Permitted, licensed, or registered to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 C.F.R. Part 258 or chapter 173-351 WAC;~~

~~(F) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 C.F.R. 257.5 through 257.30;~~

~~(G) A publicly owned treatment works (POTW): Provided, That small quantity generator(s) comply with the provisions of the domestic sewage exclusion found in WAC 173-303-071 (3)(a); or~~

~~(H) For universal waste managed under WAC 173-303-573, a universal waste handler or destination facility subject to the requirements of WAC 173-303-573; and~~

~~(iv) Submit an annual report in accordance with WAC 173-303-220 if they have obtained an EPA/state identification number pursuant to WAC 173-303-060.~~

~~(e) If a small quantity generator's wastes are mixed with used oil, the mixture is subject to WAC 173-303-510 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.~~

~~(d) If a small quantity generator's used oil is to be recycled by being burned for energy recovery or re-refined, the used oil is subject to WAC 173-303-515.)~~

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-071 Excluded categories of waste.** (1) Purpose. Certain categories of waste have been excluded from ~~many of~~ the requirements of chapter 173-303 WAC ~~(; except for WAC 173-303-050,)~~ because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as hazardous waste under 40 C.F.R. Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

- (a)(i) Domestic sewage; and
- (ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 C.F.R. Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this

exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood products must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling standards, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) ~~((Reserve;))~~ (Reserved);

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB ~~((wastes))~~ containing dielectric fluid and electric equipment containing such fluid, and any PCB wastes meeting (k)(i)(B) of this subsection, whose disposal is regulated by EPA under 40 C.F.R. ~~((761.60))~~ 761 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 C.F.R. Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 C.F.R. Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40

C.F.R. Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) and (iv) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(ii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(iv) In order to qualify for the exemption in (l)(i) and (ii) of this subsection, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must additionally not exceed 25 kg.

(m) ~~((Reserve;))~~ (Reserved);

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry

(NAICS codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) and (iv) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contami-

nated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 C.F.R. Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of

the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(iv) In order to qualify for the exemption in (r)(i) and (ii) of this subsection, the mass of a sample that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must additionally not exceed 25 kg.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in

(s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major ~~(risk(s))~~ hazard(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

((Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.))

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 C.F.R. Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materi-

als including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the

environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa)(i) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in nonoxidizing environments.

(ii) Specific wastes which meet the standard in (aa)(i)(A), (B), and (C) of this subsection (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome

tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

| Constituent      | Maximum for any single composite sample-TCLP (mg/l)                    |
|------------------|--|
|                  | Generic exclusion levels for K061 and K062 nonwastewater HTMR residues |
| Antimony         | 0.10   |
| Arsenic          | 0.50   |
| Barium           | 7.6  |
| Beryllium        | 0.010  |
| Cadmium          | 0.050  |
| Chromium (total) | 0.33   |

| Constituent   | Maximum for any single composite sample-TCLP (mg/l) |
|---|---|
| (2)Lead   | 0.15  |
| Mercury   | 0.009   |
| Nickel  | 1.0   |
| Selenium  | 0.16  |
| Silver  | 0.30  |
| Thallium  | 0.020   |
| Zinc  | 70  |
| Generic exclusion levels for F006 nonwastewater HTMR residues |   |
| Antimony  | 0.10  |
| Arsenic   | 0.50  |
| Barium  | 7.6   |
| Beryllium   | 0.010   |
| Cadmium   | 0.050   |
| Chromium (total)  | 0.33  |
| Cyanide (total) (mg/kg)                                       | 1.8   |
| Lead  | 0.15  |
| Mercury   | 0.009   |
| Nickel  | 1.0   |
| Selenium  | 0.16  |
| Silver  | 0.30  |
| Thallium  | 0.020   |
| Zinc  | 70  |

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste

characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - Including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 488210, 488999, 424710, 454311, 454312, 424720, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5)) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(ii) The leachate or gas condensate do not exhibit any characteristic or criteria of dangerous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 C.F.R. 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 C.F.R. 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 C.F.R. 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone tem-

perature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011(3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

(oo) Cathode ray tubes (CRTs) and glass removed from CRTs:

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation as defined in WAC 173-303-016 (5)(d). If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

• Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.

• The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

• The estimated total quantity of CRTs specified in kilograms.

• All points of entry to and departure from each foreign country through which the CRTs will pass.

• A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

• The name and address of the recycler and any alternate recycler.

• A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

• The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 C.F.R. 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an "Acknowledgment of Consent" to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from

EPA a copy of the "Acknowledgment of Consent" to export CRTs reflecting the receiving country's consent to the changes.

(VII) A copy of the "Acknowledgment of Consent" to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another "Acknowledgment of Consent" to export CRTs.

~~(IX) Exporters must keep copies of notifications and "Acknowledgments of Consent" to export CRTs for a period of five years following receipt of the "Acknowledgment."~~ requirements in 40 C.F.R. 261.39 (a)(5)(i) through (xi), which are incorporated by reference into this chapter 173-303 WAC.

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016 (5)(d).

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

~~((A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.~~

~~(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.)~~ Persons who export CRTs for reuse must comply with the requirements in 40 C.F.R. 261.41, which are incorporated by reference into this chapter 173-303 WAC.

(pp) Zinc fertilizers made from hazardous wastes provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm)

|                    |     |
|--------------------|-----|
| Arsenic . . . . .  | 0.3 |
| Cadmium . . . . .  | 1.4 |
| Chromium . . . . . | 0.6 |
| Lead . . . . .     | 2.8 |
| Mercury . . . . .  | 0.3 |

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 C.F.R. section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(rr) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to one hundred eighty days from the accumulation start date for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on site or at the point of being transported off site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in WAC 173-303-040;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in this chapter if the solvent designates as a dangerous waste;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documents proving that the one hundred eighty-day accumulation time limit in (rr)(ii) of this subsection is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on site or at the point of being transported off site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(ss) Solvent-contaminated wipes, except for wipes that are dangerous waste due to the presence of trichloroethylene, that are sent for disposal are not dangerous wastes from the point of generation, provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to one hundred eighty days from

the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in WAC 173-303-040;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in this chapter if the solvent designates as a dangerous waste;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the permitted treatment, storage, and disposal facility that is receiving the solvent-contaminated wipes;

(B) Documentation that the one hundred eighty-day accumulation time limit in (ss)(ii) of this subsection is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal:

(A) To a dangerous waste landfill regulated under WAC 173-303-280 through 173-303-400; or

(B) To a dangerous waste combustor, boiler, or industrial furnace regulated under 40 C.F.R. Parts 264, 265, or 266 Subpart H.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-082 Dangerous waste sources.** (1) The dangerous waste sources list appears in WAC 173-303-9904. Any waste that is listed or is a residue from the management of a waste listed on the dangerous waste sources list must be designated a dangerous waste, and identified as DW. Dangerous waste sources codes include WPCB or codes that begin with an "F" or "K."

(2) Quantity exclusion limit. A person whose waste is listed in WAC 173-303-9904 (including residues from the management of such wastes) is a dangerous waste generator (and may not be considered a small quantity generator as provided in WAC 173-303-070(8)) if the amount of ~~((his))~~ their waste exceeds the following quantity exclusion limits:

(a) 2.2 lbs. (1 kg) per month or per batch for wastes listed with the dangerous waste numbers F020, F021, F022, F023, F026, or F027. These wastes are designated DW and identified as acute hazardous wastes;

(b) 220 lbs. (100 kg) per month or per batch of any residue or contaminated soil, ~~((waste))~~ water, or other debris resulting from the cleanup of a spill, into or on any land or water of a waste listed in (a) of this subsection, or of an acute hazardous waste listed in WAC 173-303-9904 under specific sources ("K" wastes). Note: Acute hazardous K listed wastes are followed by an "H." These wastes are designated DW and identified as acute hazardous wastes; or

(c) 220 lbs. (100 kg) per month or per batch for all other wastes.

(3) Care should be taken in the proper designation of these wastes and of mixtures of these wastes and solid

wastes. A mixture of a solid waste with a waste that would be designated as a dangerous waste source under this section must be designated as a dangerous waste source unless it has been excluded under WAC 173-303-070 (2)(c). The mixture has the same designation (DW), and the same dangerous waste number as the dangerous waste source which was mixed with the solid waste.

(4) 40 C.F.R. Part 261 Appendix VII *Basis for Listing Hazardous Waste* is adopted by reference.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-110 Sampling, testing methods, and ~~((analytes))~~ analyses.** (1) Purpose. This section sets forth the testing methods to be used to comply with the requirements of this chapter. Quality control procedures specified by the testing method or an approved equivalent method must be followed for the analytical result to be considered valid for designation. All methods and publications listed in this section are incorporated by reference.

(2) Representative samples.

(a) The methods and equipment used for obtaining representative samples of a waste will vary with the type and form of the waste. The department will consider samples collected using the sampling methods below or the most recent version of such methods for wastes with properties similar to the indicated materials, to be representative samples of the wastes:

(i) Crushed or powdered material - ASTM Standard D346-04e1;

(ii) Extremely viscous liquid - ASTM Standard D140-01 (2007);

(iii) Fly ash-like material - ASTM Standard D2234/D2234M-03e1;

(iv) Soil-like material - ASTM Standard D1452-80 (2000);

(v) Soil or rock-like material - ASTM Standard D420-98 (2003);

(vi) Containerized liquid wastes - "COLIWASA" described in SW-846, as incorporated by reference at WAC 173-303-110 (3)(a), or the equivalent representative sampling method described in ASTM D5743-97 (2003). Per this method, the selection of an appropriate device must be best suited for the characteristics of the waste being sampled; and

(vii) Liquid waste in pits, ponds, lagoons, and similar reservoirs - "Pond Sampler" described in SW-846, as incorporated by reference at WAC 173-303-110 (3)(a).

(b) Copies of these representative sampling methods are available from the department except for the ASTM standards which can be obtained by writing to:

ASTM  
100 Barr Harbor Drive  
West Conshohocken, PA 19428-2959

(3) Test procedures. Copies of the test procedures listed in this subsection can be obtained by writing to the appropriate address below:

For copies of Department of Ecology test methods:

Attn: Test Procedures  
Hazardous Waste Section  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

For copies of SW-846, including updates, and 40 C.F.R. Part 261:

Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402  
202-512-1800

For copies of ASTM methods:

ASTM  
100 Barr Harbor Drive  
West Conshohocken, PA 19428-2959

For copies of APTI methods:

APTI  
National Technical Information Service  
5285 Port Royal Road  
Springfield, VA 22161

The document titles and included test procedures are as follows:

(a) *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication, SW-846* (Third Edition (November 1986) as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), IIIA (dated April 1998), IIIB (dated July 2005), ~~((and))~~ Update IVA and IVB (dated February 2007)), and Update V (dated August 2015) which is incorporated by reference. The Third Edition of SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, ~~((and))~~ IVB, and V, is available in portable document format (PDF) on EPA's Office of Resource Conservation and Recovery web page at (~~(=~~ <http://www.epa.gov/SW-846>. An official printed copy of SW-846 and most of its updates can be purchased from the National Technical Information Service, U.S. Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312, 800-553-6847 or 703-605-6000 (outside the continental U.S.);) <http://www.epa.gov/hw-sw846>;

(b) *Biological Testing Methods for the Designation of Dangerous Waste*, Department of Ecology Publication #80-12, the latest revision, describing procedures for:

(i) Static acute fish toxicity test; and

(ii) Acute oral rat toxicity test(;)];

(c) *Chemical ~~((Testing))~~ Test Methods for Designating Dangerous Waste*, Department of Ecology Publication #97-407, revised December 2014 describing methods for testing:

(i) Ignitability;

(ii) Corrosivity;

(iii) Reactivity;

(iv) Toxicity characteristic leaching procedure;

(v) Halogenated organic compounds; and

(vi) Polycyclic aromatic hydrocarbons.

(d) ~~((Reserve;))~~ (Reserved);

(e)(i) The determination of Polychlorinated Biphenyls in Transformer Fluids and Waste Oils, EPA-600/4-81-045; and

(ii) Analysis of Polychlorinated Biphenyls in Mineral Insulating Oils by Gas Chromatography, ASTM Standard D4059-00 (2005)e1.

(f) Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846((-));

(g) The following publications for air emission standards (in addition to (a) of this subsection)((-));

(i) ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography, ASTM Standard D1946-90 (2006).

(ii) ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), ASTM Standard D4809-06.

(iii) ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis, ASTM Standard E169-04.

(iv) ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis, ASTM Standard E168-06.

(v) ASTM Standard Practice for Packed Column Gas Chromatography, ASTM Standard E260-96 (2006).

(vi) ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography, ASTM Standard D5580-02.

(vii) ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenscope, ASTM Standard D2879-97 (2002)e1.

(viii) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

(ix) API Manual of Petroleum Measurement Standards (MPMS) chapter 19.2 (API MPMS 19.2), Evaporative Loss from External Floating-Roof Tanks (formerly API Publications 2517 and 2519), Third Edition, American Petroleum Institute, Washington D.C., October 2012.

(h) The following publications:

(i) "NFPA 30 Flammable and Combustible Liquids Code" (~~((2012))~~ 2015), available from the National Fire Protection Association, NFPA Headquarters, 1 Batterymarch Park, Quincy, MA 02169-7471.

(ii) U.S. EPA, "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC.

(iii) "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-94, Test Method C-Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(iv) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by Extraction and Gravimetry. Available from NTIS, PB99-121949, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(v) ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester, ASTM Standard D3278-96 (2004)e1, available from American Society for Testing and Materials.

(vi) ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester, ASTM Standard D93-06.

(vii) API Manual of Petroleum Measurement Standards (MPMS) chapter 19.2 (API MPMS 19.2), Evaporative Loss from External Floating-Roof Tanks (formerly API Publications 2517 and 2519), Third Edition, American Petroleum Institute, Washington D.C., October 2012.

(4) Substantial changes to the testing methods described above will be made only after the department has provided adequate opportunity for public review and comment on the proposed changes. The department may, at its discretion, schedule a public hearing on the proposed changes.

(5) Equivalent testing methods. Any person may request department approval for the use of an equivalent testing method by submitting a petition, prepared in accordance with WAC 173-303-910(2), to the department.

(6) Reporting analytical results. Ecology requires that all test methods report their analytical results for solid and soil samples on a dry weight basis. Reporting on a dry weight basis compensates for variability in water content and provides a consistent procedure for all analytical results provided to ecology for designation purposes.

(7) "Ground-Water Monitoring List" Appendix IX to 40 C.F.R. Part 264 is replaced with the version in Appendix 5 of *Chemical Testing Methods for Designating Dangerous Waste*, Department of Ecology Publication #97-407, revised December 2014. The Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods* includes the columns "Suggested methods" and "PQL."

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-120 Recycled, reclaimed, and recovered wastes.** (1) This section describes the requirements for persons who recycle materials that are solid wastes and dangerous. Except as provided in subsections (2) and (3) of this section, dangerous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsection (4) of this section. Dangerous wastes that are recycled will be known as "recyclable materials."

(2)(a) The following recyclable materials are solid wastes and sometimes are dangerous wastes. However, they are subject only to the requirements of (b) of this subsection, WAC 173-303-050, 173-303-145 and 173-303-960:

(i) Industrial ethyl alcohol that is reclaimed ((f))except that(~~(, unless provided otherwise in an international agreement as specified in 40 C.F.R. 262.58:))~~ exports and imports of such recyclable materials must comply with the requirements of 40 C.F.R. Part 262, Subpart H. See export requirements at 40 C.F.R. 261.6 (a)(3)(i)(A) and (B) that are incorporated by reference at WAC 173-303-230(1)((g));

(ii) (~~(Reserve:))~~ (Reserved);

(iii) ~~(Reserved);~~

(iv) Scrap metal that is not excluded under WAC 173-303-071 (3)(ff);

(v) Fuels produced from the refining of oil-bearing dangerous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing dangerous wastes where such recovered oil is already excluded under WAC 173-303-071 (3)(cc));

(vi) ~~((Reserved))~~ (Reserved);

(vii) Coke and coal tar from the iron and steel industry that contains dangerous waste from the iron and steel production process;

(viii)(A) Dangerous waste fuel produced from oil-bearing dangerous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such dangerous wastes, where such dangerous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)) and so long as no other dangerous wastes are used to produce the dangerous waste fuel;

(B) Dangerous waste fuel produced from oil-bearing dangerous waste from petroleum refining production, and transportation practices, where such dangerous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)); and

(C) Oil reclaimed from oil-bearing dangerous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)).

(b) Any recyclable material listed in (a) of this subsection will be subject to the applicable requirements listed in subsection (4) of this section if the department determines, on a case-by-case basis, that:

(i) It is being accumulated, used, reused, or handled in a manner that poses a threat to public health or the environment; or

(ii) Due to the dangerous constituent(s) in it, any use or reuse would pose a threat to public health or the environment. Such recyclable material will be listed in WAC 173-303-016(6).

(3) The recyclable materials listed in (a) through (h) of this subsection are not subject to the requirements of this section but are subject to the requirements of WAC 173-303-070 through 173-303-110, 173-303-160, 173-303-500 through 173-303-525, and all applicable provisions of WAC 173-303-800 through 173-303-840. The recyclable materials listed in (b), (d), (f) and (g) of this subsection are also subject to WAC 173-303-140.

In addition to these requirements, owners and operators of facilities that receive recyclable materials from off-site are subject to WAC 173-303-610 (2) and (12) and to WAC 173-303-620 (1)(e).

(a) Recycling requirements for state-only dangerous wastes (see WAC 173-303-500);

(b) Recyclable materials used in a manner constituting disposal (see WAC 173-303-505);

(c) Spent CFC or HCFC refrigerants that are recycled on-site or sent to be reclaimed off-site (see WAC 173-303-506);

(d) Dangerous wastes burned (as defined in WAC 173-303-510 (1)(a)) in boilers and industrial furnaces that are not regulated under Subpart O of 40 C.F.R. Part 265 or WAC 173-303-670 (see WAC 173-303-510);

(e) (Reserved);

(f) Spent lead-acid batteries that are being reclaimed (see WAC 173-303-520);

(g) Recyclable materials from which precious metals are reclaimed (see WAC 173-303-525); and

(h) Spent antifreeze that is recycled on-site or sent to be recycled off-site (see WAC 173-303-522).

(4) Those recycling processes not specifically discussed in subsections (2) and (3) of this section are generally subject to regulation only up to and including storage prior to recycling. For the purpose of this section, the department may determine on a case-by-case basis that recyclable materials received from off-site are not stored if they are moved into an active recycling process within a period of time not to exceed seventy-two hours after being received. In making such a determination, the department will consider factors including, but not limited to, the types and volumes of wastes being recycled, operational factors of the recycling process, and the compliance history of the owner or operator. An active recycling process refers to a dynamic recycling operation that occurs within a recycling unit such as a distillation or centrifuge unit. The phrase does not refer to passive storage-like activities that occur, for example, when tanks or containers are used for phase separation or for settling impurities. Passive storage-like activities are not eligible for the recycling exemption under this subsection.

The recycling process itself is generally exempt from permitting unless the department determines, on a case-by-case basis, that the recycling process poses a threat to public health or the environment.

Unless specified otherwise in subsections (2) and (3) of this section:

(a) Generators of recyclable materials are subject to all applicable requirements of this chapter including, but not limited to, WAC 173-303-170 through 173-303-230;

(b) Transporters of recyclable materials are subject to all applicable requirements of this chapter including, but not limited to, WAC 173-303-240 through 173-303-270;

(c) Owners or operators of facilities that receive recyclable materials from off-site and recycle these recyclable materials without storing them before they are recycled are subject to the following requirements:

(i) WAC 173-303-060,

(ii) WAC 173-303-120 (4)(e),

(iii) WAC 173-303-283 through 173-303-290,

(iv) WAC 173-303-310 through 173-303-395,

(v) WAC 173-303-610 (2) and (12),

(vi) WAC 173-303-620 (1)(e),

(vii) WAC 173-303-630 (2) through (10), and

(viii) WAC 173-303-640 (2) through (10) except that requirements to post-closure planning or care in WAC 173-303-640(8) will not apply to closure of recycling units. In lieu of the dates in WAC 173-303-640 (2) and (4), for existing tank systems regulated under this subsection, owners and operators must complete the assessment of the tank system's integrity by June 1, 1992, and must meet the secondary containment requirements of WAC 173-303-640(4) by January 12, 1993;

(ix) The owner or operator must obtain data, by screening-type analysis if necessary, confirming the designation of each waste stream, such that each dangerous waste received can be effectively recycled without jeopardizing human health or the environment. The owner or operator must verify the waste designation periodically, so that it is accurate and current, but at least once every six months or on a batch basis if shipments of a specific waste stream are less frequent. Copies of all analyses and data must be retained for at least five years and made available to the department upon request.

(d) Owners and operators of facilities that store recyclable materials before they are recycled are subject to the following requirements including, but not limited to:

- (i) For all recyclers, the applicable provisions of:
  - (A) WAC 173-303-280 through 173-303-395,
  - (B) WAC 173-303-800 through 173-303-840,
  - (C) WAC 173-303-140 (2)(a),
  - (D) WAC 173-303-120 (4)(e);

(ii) For recyclers with interim status permits, the applicable storage provisions of WAC 173-303-400 including Subparts F through L of 40 C.F.R. Part 265;

(iii) For recyclers with final facility permits, the applicable storage provisions of:

- (A) WAC 173-303-600 through 173-303-650, and
- (B) WAC 173-303-660.

(e) Owners and operators of facilities subject to dangerous waste permitting requirements with dangerous waste management units that recycle hazardous wastes are subject to the requirements of WAC 173-303-690, 173-303-691 (Air emission standards for process vents and equipment leaks), and WAC 173-303-692 (Air emission standards for tanks, surface impoundments, and containers) for final status facilities, and 40 C.F.R. Part 265 Subparts AA, BB, and CC, incorporated by reference at WAC 173-303-400(3) for interim status facilities.

(5) Used oil that is recycled and is also a dangerous waste solely because it exhibits a dangerous waste characteristic or criteria is not subject to ~~((the requirements of))~~ this chapter except for applicable requirements of WAC 173-303-515 and the requirements of 40 C.F.R. Part 279, which is incorporated by reference at WAC 173-303-515. Used oil that is recycled includes any used oil that is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil that is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(6) Hazardous waste that is exported to or imported from ~~((designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 40 C.F.R. 262.58 (a)(1)) for purpose of recovery is subject to the requirements of 40 C.F.R. Part 262, subpart H, if it is sub-~~

~~ject to either the manifesting requirements at WAC 173-303-180 or to the universal waste management standards of WAC 173-303-573)) any country for recovery is subject to the requirements of 40 C.F.R. Part 262, Subpart H.~~

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-140 Land disposal restrictions. (1)**

Purpose.

(a) The purpose of this section is to encourage the best management practices for dangerous wastes according to the priorities of RCW 70.105.150 which are, in order of priority:

- (i) Reduction;
- (ii) Recycling;
- (iii) Physical, chemical, and biological treatment;
- (iv) Incineration;
- (v) Stabilization and solidification; and
- (vi) Landfill.

(b) This section identifies dangerous wastes that are restricted from land disposal, describes requirements for restricted wastes, and defines the circumstances under which a prohibited waste may continue to be land disposed.

(c) For the purposes of this section, the term "landfill," as stated in the priorities of RCW 70.105.150, will be the same as the term "land disposal." Land disposal will be used in this section to identify the lowest waste management priority.

(2) Applicability.

The land disposal restrictions of this section apply to any person who owns or operates a dangerous waste treatment, storage, or disposal facility in Washington state and to any person who generates or transports dangerous waste.

(a) Land disposal restrictions for wastes designated in accordance with WAC 173-303-070 (3)(a)(i), (ii), and (iii) are the restrictions set forth by the Environmental Protection Agency in 40 C.F.R. Part 268 which are incorporated by reference into this regulation, as modified in (c) through (f) of this subsection, and the restrictions set forth in subsections (3) through (7) of this section. The words "regional administrator" (in 40 C.F.R.) will mean the "department," except for 40 C.F.R. Parts 268.5 and 268.6; 268 Subpart B; 268.42(b) and 268.44 (a) through (g). The authority for implementing these excluded C.F.R. sections remains with the U.S. Environmental Protection Agency. The word "EPA" (in 40 C.F.R.) means "Ecology" at 40 C.F.R. 268.44(m) and 268.45(a). The exemption and exception provisions of subsections (3) through (7) of this section are not applicable to the federal land disposal restrictions.

Where the federal regulations that have been incorporated by reference refer to 40 C.F.R. 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110.

(b) Land disposal restrictions for state-only dangerous waste are the restrictions set forth in subsections (3) through (7) of this section.

(c) Where 40 C.F.R. 268.7 (a)(1) is incorporated by reference, delete the sentence "Alternatively, the generator must send the waste to a RCRA-permitted dangerous waste treatment facility, where the waste treatment facility must comply

with the requirements of 264.13 of this chapter and 268.7(b) of this section."

(d) Where 40 C.F.R. 268.7 (a)(2) is incorporated by reference:

(i) Delete the words "or if the generator chooses not to make the determination of whether (~~his~~) their waste must be treated" from the first sentence; and

(ii) Delete the sentence "(Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state 'This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination'.)"

(e) Where 40 C.F.R. 268.7 (b)(6) is incorporated by reference, replace the words "for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number)" with the words "submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except for the manifest number) to the department for each shipment".

(f) Where 40 C.F.R. 268.9(d) is incorporated by reference, replace paragraph (d) with the following: Wastes that exhibit a characteristic are also subject to Section 268.7 requirements, except that once the waste is no longer dangerous, a one-time notification and certification must be placed in the generators or treaters files and sent to the department. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31.

(i) The notification must include the following information:

(A) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and

(B) A description of the waste as initially generated, including the applicable dangerous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in Sec. 268.2(i)), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

(ii) The certification must be signed by an authorized representative and must state the language found in Section 268.7 (b)(4).

If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in Sec. 268.7 (b)(4)(iv) applies.

### (3) Definitions.

When used in this section the following terms have the meaning provided in this subsection. All other terms have the meanings given under WAC 173-303-040.

(a) "Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents which have caused a waste to be a dangerous waste under this chapter.

(b) "Land disposal" means placement in a facility or on the land with the intent of leaving the dangerous waste at closure, and includes, but is not limited to, placement for disposal purposes in a: Landfill; surface impoundment; waste pile; injection well; land treatment facility; salt dome or salt bed formation; underground cave or mine; concrete vault or bunker.

(c) "Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

(d) "Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity test of WAC 173-303-090 (6)(a)(iii).

(e) "Stabilization" and "solidification" mean a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

(4) Land disposal restrictions and prohibitions. The land disposal requirements of this subsection apply to land disposal in Washington state.

(a) Disposal of extremely hazardous waste (EHW). No person may land dispose of EHW, except as provided in subsection (5) of this section, at any land disposal facility in the state. No person may land dispose of EHW at the facility established under RCW 70.105.050, except as provided by subsections (5), (6), and (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, neutralize, or otherwise process EHW to remove or reduce its harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter.

(b) Disposal of liquid waste. Special requirements for bulk and containerized liquids.

(i) The placement of bulk or noncontainerized liquid dangerous waste or dangerous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(ii) Containers holding free liquids must not be placed in a landfill unless:

(A) All free-standing liquid:

(I) Has been removed by decanting, or other methods; or

(II) Has been mixed with sorbent or stabilized (solidified) so that free-standing liquid is no longer observed; or

(III) Has been otherwise eliminated; or

(B) The container is very small, such as an ampule; or

(C) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(D) The container is a labpack and is disposed of in accordance with WAC 173-303-161 and this chapter.

(iii) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following tests must be used: Method 9095 (Paint Filter Liquids Test)

as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" EPA Publication SW-846 as incorporated by reference in WAC 173-303-110 (3)(a).

(iv) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: Materials listed or described in (b)(iv)(A) of this subsection; materials that pass one of the tests in (b)(iv)(B) of this subsection; or materials that are determined by the department to be nonbiodegradable through WAC 173-303-910.

(A) Nonbiodegradable sorbents.

(I) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(II) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorbornene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(III) Mixtures of these nonbiodegradable materials.

(B) Tests for nonbiodegradable sorbents.

(I) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-96 (2002) - Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(II) The sorbent material is determined to be nonbiodegradable under OECD (Organization for Economic Cooperation and Development) test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

(v) The placement of any liquid which is not a dangerous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the department, or the department determines, that:

(A) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in WAC 173-303-040).

(c) Disposal of solid acid waste. No person may land dispose solid acid waste, except as provided in subsection((s)) (5), (6), or (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, neutralize, or otherwise process these wastes to remove or reduce their harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter.

(d) Disposal of organic/carbonaceous waste.

(i) No person may land dispose organic/carbonaceous waste, except as provided in subsection((s)) (5), (6), or (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, or otherwise process these wastes to remove or reduce their harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter. Organic/carbonaceous wastes must be incinerated as a minimum management method according to the dangerous waste management priorities as defined in subsection (1)(a) of this section.

(ii) This prohibition against the land disposal of organic/carbonaceous waste does not apply to black mud generated from the caustic leach recovery of cryolite at primary aluminum smelting plants.

(iii) This prohibition against the land disposal of organic/carbonaceous waste does not apply to any person who certifies to the department that recycling, treatment and incineration facilities are not available within a radius of one thousand miles from Washington state's borders. Such certification must be sent to the department by certified mail or other means that establish proof of receipt (including applicable electronic means) and must include: The name, address and telephone number of the person certifying; a brief description of the organic/carbonaceous waste covered by the certification; a discussion of the efforts undertaken to identify available recycling, treatment and incineration facilities; and the signature of the person responsible for the certification and development of information used to support the certification. Records and information supporting the certification must be retained by the certifying person and must be made available to the department upon request.

A certification that has been properly submitted to the department will remain valid until the department determines that a recycling, treatment or incineration facility is available within a radius of one thousand miles from Washington state's borders and the person who submitted the certification is unable to demonstrate otherwise. A recycling, treatment or incineration facility will be considered by the department to be available if such facility: Is operating, and; can safely and legally recycle, treat or incinerate the organic/carbonaceous waste, and; has sufficient capacity to receive and handle significant amounts of the waste, and; agrees to accept the waste.

(5) Treatment in land disposal facilities. The land disposal restrictions in subsection (4) of this section do not apply to persons treating dangerous wastes in surface impoundments, waste piles, or land treatment facilities provided that such treatment is performed in accordance with the requirements of this subsection and this chapter.

(a) Surface impoundment treatment.

Liquid waste, extremely hazardous waste (EHW), solid acid waste, and organic/carbonaceous waste may be placed in surface impoundments for purposes of treatment provided the owner/operator can demonstrate that effective treatment of the dangerous waste constituents will occur and at closure the owner/operator complies with the prohibitions and restrictions of subsection (4) of this section.

## (b) Waste pile treatment.

Liquid waste, extremely hazardous waste (EHW), solid acid waste, and organic/carbonaceous waste may be placed in waste piles for purposes of treatment provided the owner/operator can demonstrate that effective treatment of dangerous waste constituents will occur and that at closure the owner/operator will be in compliance with the prohibitions and restrictions of subsection (4) of this section.

## (c) Land treatment.

Liquid waste, extremely hazardous waste (EHW), and organic/carbonaceous waste may be land treated provided that the owner/operator can demonstrate that effective treatment of dangerous waste constituents will occur, and at the end of the post-closure care period the owner/operator will be in compliance with subsection (4) of this section.

(6) Case-by-case exemptions to a land disposal prohibition. Any person may petition the department for an exemption from a prohibition in subsection (4) of this section for the land disposal of a dangerous waste. The procedures to submit a petition to the department are specified in WAC 173-303-910(6). The department may deny any petition if it determines that there is a potential for dangerous waste constituents to migrate from the land disposal facility where the waste is to be placed. The department will deny any petition when exemption would result in a substantial or imminent threat to public health or the environment. The department will deny any petition when exemption would result in a violation of applicable state laws.

The department may grant an exemption from the prohibitions and restrictions of subsection (4) of this section based on the demonstrations specified in (a), (b) or (c) of this subsection.

(a) Land disposal exemption for treatment residuals. Any person may request an exemption from a land disposal prohibition in subsection (4) of this section for treatment residuals by demonstrating to the department that:

(i) The person has applied the best achievable management method to the original waste; and

(ii) Application of additional management methods to the treatment residuals would prevent the person from utilizing the best achievable management methods for the original dangerous waste; and

(iii) The land disposal of the treatment residuals does not pose a greater risk to the public health and the environment than land disposal of the original dangerous waste would pose.

(b) Economic hardship exemption. Any person may request an exemption from a prohibition in subsection (4) of this section for the land disposal of a dangerous waste by demonstrating to the department that alternative management of the dangerous waste will impose an unreasonable economic burden in relation to the threat of harm to public health and the environment. It will be solely within the discretion of the department to approve or deny the requests for exemptions based on economic hardship.

(c) Organic/carbonaceous waste exemption. Any person may request an exemption from the requirements in subsection (4) of this section by demonstrating to the department that:

(i) Alternative management methods for organic/carbonaceous waste are less protective of public health and the environment than stabilization or landfilling; or

(ii)(A) The organic/carbonaceous waste has a heat content less than 3,000 BTU/LB or contains greater than sixty-five percent water or other noncombustible moisture; and

(B) Incineration is the only management method available within a radius of one thousand miles from Washington state's border (i.e., recycling or treatment are not available).

(7) Emergency cleanup provision. The department may, on a case-by-case basis, grant an exception to the land disposal restrictions in subsection (4) of this section for an emergency cleanup where an imminent threat to public health and the environment exists. Any exception will require compliance with applicable state law and will require (consistent with the nature of the emergency and imminent threat) application of the waste management priorities of RCW 70.105-150.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-160 Containers.** (1) Waste quantity. Containers and inner liners will not be considered as a part of the waste when measuring or calculating the quantity of a dangerous waste. Only the weight of the residues in non-empty or nonrinsed containers or inner liners will be considered when determining waste quantities.

(2) A container or inner liner is "empty" when:

(a) All wastes in it have been taken out that can be removed using practices commonly employed to remove materials from that type of container or inner liner (for example, pouring, pumping, aspirating, etc.) and:

(i) No more than one inch of waste remains at the bottom of the container or inner liner; or

(ii) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

A container that held compressed gas is empty when the pressure inside the container equals or nearly equals atmospheric pressure; and

(b) If the container or inner liner held acutely hazardous waste, as defined in WAC 173-303-040, toxic EHW as defined in WAC 173-303-100 or pesticides bearing the danger or warning label, the container or inner liner has been rinsed at least three times with an appropriate cleaner or solvent. The volume of cleaner or solvent used for each rinsing must be ten percent or more of the container's or inner liner's capacity or of sufficient quantity to thoroughly decontaminate the container. In lieu of rinsing for containers that might be damaged or made unusable by rinsing with liquids (for example, fiber or cardboard containers without inner liners), an empty container may be vacuum cleaned, struck, with the open end of the container up, three times (for example, on the

ground, with a hammer or hand) to remove or loosen particles from the inner walls and corners, and vacuum cleaned again. Equipment used for the vacuum cleaning of residues from containers or inner liners must be decontaminated before discarding, in accordance with procedures approved by the department. A container or inner liner is also considered "empty" if the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal.

Any rinsate or vacuumed residue that results from the cleaning of containers or inner liners must, whenever possible, be reused in a manner consistent with the original intended purpose of the substance in the container or inner liner. In the case of a farmer, if the rinsate is a pesticide residue then the rinsate must be managed or reused in a manner consistent with the application instructions on the pesticide label. On-site disposal or burial of pesticide residues is prohibited. Otherwise, the rinsate must be checked against the designation requirements (WAC 173-303-070 through 173-303-100) and, if designated, managed according to the requirements of this chapter.

(c) In the case of a container, the inner liner, that prevented the container from contact with the commercial chemical product or manufacturing chemical, has been removed.

(3)(a) Any residues remaining in containers or inner liners that are "empty" as described in subsection (2) of this section will not be subject to the requirements of this chapter, and will not be considered as accumulated wastes for the purposes of calculating waste quantities.

(b) Any dangerous waste in either: A container that is not empty, or an inner liner removed from a container that is not empty (as defined in subsection (2) of this section) is subject to the requirements of this chapter.

(4) A person who cannot meet the provisions in (2)(b) of this section may petition the department to approve alternative container rinsing processes in accordance with WAC 173-303-910(1).

**NEW SECTION**

**WAC 173-303-169 Quantity exclusion limits—Generator category determinations.** A generator must determine its generator category. A generator's category is based

on the amount of dangerous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a small quantity generator, a medium quantity generator, or a large quantity generator for a particular month, as defined in WAC 173-303-040.

(1) Quantity exclusion limits. In each of the designation sections describing the lists, characteristics, and criteria, quantity exclusion limits (QEL) are identified. The QEL is the quantity of dangerous waste generated in a calendar month used to distinguish when a dangerous waste is only subject to the small quantity generator provisions, the medium quantity generator provisions, or when a dangerous waste is subject to the large quantity generator provisions. Any solid waste (which is not excluded or exempted) that is listed, exhibits a characteristic, or meets the criteria of this chapter is a dangerous waste.

(2) Aggregated waste quantities.

(a) A person may be generating more than one kind of dangerous waste. In such cases, they must consider the aggregate quantity of their wastes when determining whether or not their waste amounts exceed the specific quantity exclusion limits (QEL) for waste generation;

(b) Waste quantities must be aggregated for all waste with common QELs. Example: If a person generates 100 pounds of an ignitable waste and 130 pounds of a persistent waste, then both wastes are regulated because the aggregate waste quantity (230 pounds) exceeds the common QEL of 220 pounds. On the other hand, if a person generates one pound of toxic EHW and 218 pounds of a corrosive waste, their quantities would not be aggregated because they do not share a common QEL (2.2 pounds and 220 pounds, respective QELs).

(3) Generator category determination.

(a) Determine separately the resulting generator categories for the quantities of waste with a 2.2 pound QEL and for the quantities of waste with a 220 pound QEL using Table 1 of this section; and

(b) Compare the resulting generator categories from (a) of this subsection and apply the more stringent generator category to the accumulation and management of dangerous waste with a 2.2 pound QEL and with a 220 pound QEL.

Table 1  
Generator Categories Based on Quantity of Waste Generated in a Calendar Month

| Quantity of dangerous waste with a QEL of 2.2 pounds generated in a calendar month | Quantity of dangerous waste with a QEL of 220 pounds generated in a calendar month | Quantity of residue from a cleanup of dangerous waste with a QEL of 2.2 pounds generated in a calendar month | Generator category         |
|--|--|--|----------------------------|
| > 2.2 pounds   | Any amount   | Any amount   | Large quantity generator.  |
| Any amount   | ≥ 2,200 pounds   | Any amount   | Large quantity generator.  |
| Any amount   | Any amount   | > 220 pounds   | Large quantity generator.  |
| ≤ 2.2 pounds   | > 220 pounds and < 2,200 pounds  | ≤ 220 pounds   | Medium quantity generator. |
| ≤ 2.2 pounds   | ≤ 220 pounds   | ≤ 220 pounds   | Small quantity generator.  |

(4) When making the quantity determinations of this subsection and WAC 173-303-170 through 173-303-230, generators must include all dangerous wastes they generate, except dangerous waste that:

(a) Is exempt from regulation under WAC 173-303-071; or

(b) Is recycled under WAC 173-303-120 (2)(a), (3)(c), (e), (h) or (5); or

(c) Is managed in accordance with WAC 173-303-802(5) immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in WAC 173-303-040; or

(d) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under WAC 173-303-120 (4)(a); or

(e) Is spent lead-acid batteries managed under the requirements of WAC 173-303-120 (3)(f) and 173-303-520; or

(f) Is universal waste managed under WAC 173-303-077 and 173-303-573; or

(g) Is a dangerous waste that is an unused commercial chemical product (listed in WAC 173-303-9903 or exhibits one or more characteristics or criteria listed in WAC 173-303-090 or 173-303-100) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to WAC 173-303-235(14). For purposes of this provision, the term eligible academic entity shall have the meaning as defined in WAC 173-303-235(1).

(h) (Reserved.)

(i) Is managed as part of an episodic event in compliance with the conditions of WAC 173-303-173.

(5) In determining the quantity of dangerous waste generated, a generator need not include:

(a) Dangerous waste when it is removed from on-site storage; or

(b) Spent materials that are generated, reclaimed, and subsequently reused on site, as long as such spent materials have been counted once (note: If after treatment or reclamation a residue is generated with a different waste code(s), that residue must be counted); or

(c) The container holding/containing the dangerous waste as described under WAC 173-303-160(1).

(6) Based on the generator category as determined under this section, the generator must meet the applicable independent requirements listed in WAC 173-303-170. A generator's category also determines which of the provisions of WAC 173-303-171, 173-303-172, 173-303-174 or 173-303-200 must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating dangerous waste.

(a) In a calendar month, if a small quantity generator generates more than the amounts specified in the definition of "small quantity generator" in WAC 173-303-040, the generator becomes subject to full requirements of a medium quantity generator or large quantity generator of this chapter, respectively, and cannot again be a small quantity generator until after all dangerous waste on site at the time they became fully regulated have been properly treated or disposed at a designated facility.

Example. If a person generates 4 pounds of an acute hazardous waste discarded chemical product (QEL 2.2 pounds) and 200 pounds of an ignitable waste (QEL 220 pounds), then both wastes are fully regulated, and the person is not a small quantity generator for either waste. "Fully regulated" in this example means the regulations applicable to a large quantity generator.

(b) In a calendar month if a medium quantity generator generates more than the amounts specified in the definition of "medium quantity generator" in WAC 173-303-040 the generator becomes subject to full requirements of a large quantity generator of this chapter, and cannot again be a medium quantity generator until after all dangerous waste on site at the time they became fully regulated have been properly treated or disposed at a designated facility.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-170 Requirements for generators of dangerous waste.** ~~((1) A person is a dangerous waste generator if their solid waste is designated by the requirements of WAC 173-303-070 through 173-303-100.~~

~~(a) The generator is responsible for designating their waste as DW or EHW.~~

~~(b) The generator may request an exemption for their dangerous waste according to the procedures of WAC 173-303-072.~~

~~(2) A dangerous waste generator must notify the department and obtain an EPA/state identification number as required by WAC 173-303-060, and must comply with the requirements of WAC 173-303-170 through 173-303-230.~~

~~(3) Any generator who stores, treats, or disposes of dangerous waste on-site must perform their operations in accordance with the TSD facility requirements (as specified by WAC 173-303-600) with the following exceptions:~~

~~(a) Generators who accumulate dangerous wastes for less than ninety days as allowed under WAC 173-303-200 or for less than one hundred eighty days as allowed under WAC 173-303-201 and 173-303-202;~~

~~(b)) Any person who generates a solid waste must determine if their solid waste designates as DW or EHW by the requirements of WAC 173-303-070 through 173-303-100. A person is a dangerous waste generator if their solid waste is designated as such.~~

(1) The following definitions apply to this section:

(a) "Condition for exemption" means any requirement in WAC 173-303-171 through 173-303-174, 173-303-200 through 173-303-201, 173-303-235 and also in WAC 173-303-160 (2)(b) in reference to farmers, that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in WAC 173-303-400, 173-303-600, 173-303-800 and from any requirement for notification under WAC 173-303-060.

(b) "Independent requirement" means a requirement of WAC 173-303-170(2) that states an event, action, or standard that must occur or be met, and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption.

(2) The regulations in this section establish standards for generators of dangerous waste.

(a) A person who generates a dangerous waste is subject to all the applicable independent requirements in the sections and subsections listed below:

(i) Independent requirements of a small quantity generator:

(A) Designate their waste in accordance with WAC 173-303-070;

(B) Determine generator category in accordance with WAC 173-303-169;

(C) Manage their waste in a way that does not pose a potential threat to human health or the environment; and

(D) Submit an annual report in accordance with WAC 173-303-220 if they have obtained an EPA/state identification number pursuant to WAC 173-303-060; and

(E) If a small quantity generator's wastes are mixed with used oil, the mixture is subject to WAC 173-303-510 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also subject to WAC 173-303-510 if it is destined to be burned for energy recovery; and

(F) If a small quantity generator's used oil is to be recycled by being burned for energy recovery or rerefined, the used oil is subject to WAC 173-303-515.

(ii) Independent requirements of a medium quantity generator:

(A) WAC 173-303-070 Designation of dangerous waste. The generator is responsible for designating their waste as DW or EHW;

(B) WAC 173-303-169 Quantity exclusion limits—Generator category determinations. The generator is responsible for determining their generator category;

(C) WAC 173-303-060 Notification and identification numbers. A dangerous waste generator must notify the department and obtain an EPA/state identification number as required by WAC 173-303-060;

(D) WAC 173-303-140. The generator must comply with all applicable land disposal restrictions for dangerous wastes in WAC 173-303-140;

(E) WAC 173-303-180 Manifest;

(F) WAC 173-303-190 Preparing dangerous waste for transport;

(G) WAC 173-303-210 Generator recordkeeping;

(H) WAC 173-303-220 Generator reporting;

(I) WAC 173-303-230 Special conditions.

(iii) Independent requirements of a large quantity generator:

(A) WAC 173-303-070 Designation of dangerous waste. The generator is responsible for designating their waste as DW or EHW;

(B) WAC 173-303-169 Quantity exclusion limits—Generator category determinations. The generator is responsible for determining their generator category;

(C) WAC 173-303-060 Notification and identification numbers. A dangerous waste generator must notify the department and obtain an EPA/state identification number as required by WAC 173-303-060;

(D) WAC 173-303-140. The generator must comply with all applicable land disposal restrictions for dangerous wastes in this section;

(E) WAC 173-303-180 Manifest;

(F) WAC 173-303-190 Preparing dangerous waste for transport;

(G) WAC 173-303-210 Generator recordkeeping;

(H) WAC 173-303-220 Generator reporting;

(I) WAC 173-303-230 Special conditions.

(b) A generator that accumulates dangerous waste on site is a person that stores dangerous waste. Any generator who stores, treats, or disposes of dangerous waste on site must perform their operations in accordance with the TSD facility requirements (as specified by WAC 173-303-600) with the following exceptions:

(i) A small quantity generator that meets the conditions for exemption in WAC 173-303-171; or

(ii) A medium quantity generator that meets the conditions of exemption in WAC 173-303-172 and 173-303-174; or

(iii) A large quantity generator that meets the conditions for exemption in WAC 173-303-174, 173-303-200, and 173-303-201.

(iv) In addition to complying with the requirements of (b)(ii) of this subsection for medium quantity generators, and (b)(iii) of this subsection for large quantity generators, generators that treat their dangerous waste on site must:

(A) Not treat dangerous waste on drip pads; and

(B) Maintain a treatment log showing dates and amounts of waste treated; and

(C) Comply with 173-303-283(3).

(v) A generator who treats special waste on site provided:

(A) The accumulation standards of WAC 173-303-073 (2)(a) and (b) are met;

(B) When treated in units other than tanks or containers, the unit is designed, constructed, and operated in a manner that prevents:

(I) A release of waste and waste constituents to the environment;

(II) Endangerment of health of employees or the public;

(III) Excessive noise; and

(IV) Negative aesthetic impact on the use of adjacent property.

(C) The treatment unit must also be inspected routinely for deterioration that would lead to a release and repairs must be conducted promptly.

(c) A generator shall not transport, offer its dangerous waste for transport, or otherwise cause its dangerous waste to be sent to a facility that is not a designated facility, as defined in WAC 173-303-040, or not otherwise authorized to receive the generator's dangerous waste.

(3) Determining generator category. A generator must use WAC 173-303-169 to determine which provisions of this section are applicable to the generator based on the quantity of dangerous waste generated per month.

(4) Any person who exports or imports dangerous waste must comply with WAC 173-303-060 and 173-303-230.

(5) Violations of independent requirements or conditions for exemption:

(a) Independent requirement violations. A generator's violation of an independent requirement is subject to penalty and injunctive relief under this chapter 173-303 WAC and RCW 70.105.080.

(b) Condition for exemption violations. A generator's noncompliance with a condition for exemption in this section is not subject to penalty or injunctive relief under the authority of this chapter 173-303 WAC or RCW 70.105.080 as a violation of a condition of exemption. Noncompliance by any generator with an applicable condition for exemption from a storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in WAC 173-303-400, 173-303-600, 173-303-800, 173-303-500 through 173-303-578, 173-303-700, and the notification requirements of WAC 173-303-060. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under this chapter 173-303 WAC and RCW 70.105.080.

(c) Generators who treat dangerous waste on-site in accumulation tanks, containers, and containment buildings provided that the generator maintains a log showing the date and amount of waste treated and complies with:

(i) The applicable requirements of WAC 173-303-200, 173-303-201, and 173-303-202; and

(ii) WAC 173-303-283(3);

~~(e) Generators who treat special waste on-site provided:~~

~~(i) The accumulation standards of WAC 173-303-073 (2)(a) and (b) are met;~~

~~(ii) When treated in units other than tanks or containers, the unit is designed, constructed, and operated in a manner that prevents:~~

~~(A) A release of waste and waste constituents to the environment;~~

~~(B) Endangerment of health of employees or the public;~~

~~(C) Excessive noise;~~

~~(D) Negative aesthetic impact on the use of adjacent property.~~

~~(iii) The treatment unit must also be inspected routinely for deterioration that would lead to a release and repairs must be conducted promptly.~~

~~(4) The generator must comply with the special land disposal restrictions for certain dangerous wastes in WAC 173-303-140.~~

~~(5)).~~

(6) Persons responding to an explosives or munitions emergency in accordance with WAC 173-303-400 (2)(c) (xiii)(A)(IV) or 173-303-600 (3)(p)(i)(D) or (3)(p)(iv), and WAC 173-303-800 (7)(c)(i)(D) or (7)(c)(i)(E) are not required to comply with the standards of WAC 173-303-170 through 173-303-230.

((6)) (7) Any person who exports or imports hazardous waste subject to the manifesting requirements of WAC 173-303-180, the universal waste management standards of WAC 173-303-573, or to the export requirements in the spent lead-acid battery management standards of WAC 173-303-520, or to or from ~~(the countries listed in 40 C.F.R. 262.58 (a)(1))~~ another country for recovery or disposal must comply with 40 C.F.R. 262 subpart H. 40 C.F.R. 262 subpart H is incorporated by reference at WAC 173-303-230(1).

~~((7)) (8) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of WAC 173-303-235 are not subject to (for purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in WAC 173-303-235(1)):~~

~~(a) The requirements of WAC 173-303-070(3) or ((173-303-200(2);)) the regulations in WAC 173-303-174 for large quantity generators and medium quantity generators (~~(regulated under WAC 173-303-201)),~~ except as provided in WAC 173-303-235; and~~

~~(b) The conditions of WAC ((173-303-070(8)(b))) 173-303-171, for small quantity generators, except as provided in WAC 173-303-235.~~

## NEW SECTION

### **WAC 173-303-171 Conditions for exemption for a small quantity generator.**

(1) Provided that the small quantity generator meets all the conditions for exemption listed in this section, dangerous waste generated by the small quantity generator is not subject to regulation under this chapter except for WAC 173-303-050, 173-303-070, 173-303-145, 173-303-169, 173-303-170, 173-303-171 and 173-303-960. The conditions for exemption are as follows:

(a) In a calendar month the small quantity generator generates less than or equal to the amounts specified in the definition of "small quantity generator" in WAC 173-303-040;

(b) The small quantity generator complies with WAC 173-303-070;

(c) The quantity accumulated or stored at any time does not exceed 2,200 pounds for wastes with a 220 pound QEL and 2.2 pounds for waste with a 2.2 pound QEL. (Exception: The accumulation limit for the acute hazardous wastes described in WAC 173-303-081 (2)(a)(iv) and 173-303-082 (2)(b) and for extremely hazardous waste WT01 is 220 pounds);

(d) If a person accumulates or stores any dangerous wastes that exceed the accumulation limits set forth in (c) of this subsection, then all dangerous waste accumulated or stored by that person is subject to the requirements for the conditions for exemption for a large quantity generator in WAC 173-303-200.

(e) A small quantity generator that accumulates dangerous waste in amounts less than or equal to the limits in (c) of this subsection must either treat or dispose of their dangerous waste in an on-site facility, or ensure delivery to an off-site facility, either of which, if located in the United States, is:

(i) Permitted (including permit-by-rule, interim status, or final status) under WAC 173-303-800 through 173-303-840;

(ii) Authorized to manage dangerous waste by another state with a hazardous waste program approved under 40 C.F.R. Part 271, or by EPA under 40 C.F.R. Part 270;

(iii) Permitted to manage moderate risk waste under chapter 173-350 WAC (Solid waste handling standards), operated in accordance with state and local regulations, and consistent with the applicable local hazardous waste plan that has been approved by the department;

(iv) A facility that beneficially uses or reuses, or legitimately recycles or reclaims the dangerous waste, or that treats the waste prior to such recycling activities;

(v) Permitted, licensed, or registered to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 C.F.R. Part 258 or chapter 173-351 WAC;

(vi) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 C.F.R. 257.5 through 257.30;

(vii) A publicly owned treatment works (POTW): Provided, that small quantity generator(s) comply with the provisions of the domestic sewage exclusion found in WAC 173-303-071 (3)(a);

(viii) For universal waste managed under WAC 173-303-573, a universal waste handler or destination facility subject to the requirements of WAC 173-303-573; or

(ix) A large quantity generator under the control of the same person as the small quantity generator, provided the following conditions are met:

(A) The small quantity generator and the large quantity generator are under the control of the same person as defined in WAC 173-303-040 of this chapter. Contractors, consultants, transporters, etc., who operate generator facilities on behalf of a different person as defined in WAC 173-303-040 of this chapter shall not be deemed to "control" such generators.

(B) The small quantity generator clearly labels or marks each container(s) and tank(s) of dangerous waste with the words "dangerous waste" or "hazardous waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(C) The small quantity generator clearly labels or marks each container(s) and tank(s) of dangerous waste with an indication of the hazards of the contents (examples include, but not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(I) Legible and recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(II) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel and employees.

(2) The placement of bulk or noncontainerized liquid dangerous waste or dangerous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(3) A small quantity generator experiencing an episodic event may generate and accumulate dangerous waste from the episodic event in accordance with WAC 173-303-173 in lieu of WAC 173-303-172 and 173-303-200.

## NEW SECTION

**WAC 173-303-172 Conditions for exemption for a medium quantity generator that accumulates dangerous waste.** A medium quantity generator, not to include transporters as referenced in WAC 173-303-240(3), may accumulate dangerous waste on site without a permit, interim status, and without complying with the requirements of WAC 173-303-600 provided that all the following conditions for exemption listed in this section are met. The special provisions of this section do not apply to acutely hazardous wastes or toxic EHW (WT01) that exceed the QEL that are being generated or accumulated by the generator.

(1) Off-site shipments. All dangerous waste is shipped off site to a designated facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845 or recycled or treated on site in one hundred eighty days or less. A generator who accumulates dangerous waste for more than one hundred eighty days is an operator of a storage facility and is subject to the facility requirements of this chapter and the permit requirements of this chapter as a storage facility unless the generator has been granted an extension to the one hundred eighty-day period by the department as described in subsection (3) of this section.

(2) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "medium quantity generator" in WAC 173-303-040.

(3) Accumulation time limit. The generator accumulates dangerous waste on site for no more than one hundred eighty days unless the department has granted a maximum ninety-day extension to this one hundred eighty-day period. The department may, on a case-by-case basis, grant a maximum ninety-day extension to this one hundred eighty-day period if the generator must transport its waste, or offer its waste for transportation, over a distance of two hundred miles or more for off-site treatment, storage, or disposal and the dangerous wastes must remain on site due to unforeseen, temporary, and uncontrollable circumstances. For the purposes of this section, the one hundred eighty-day accumulation period begins on the date that:

(a) The generator first generates a dangerous waste; or

(b) The generator exceeds its satellite accumulation limits prescribed in WAC 173-303-174(1).

(4) Accumulation limit. The quantity of dangerous waste accumulated on site never exceeds the following limits at any one time:

(a) 2,200 Pounds of dangerous waste; or

(b) 2.2 Pounds of acutely hazardous waste or toxic EHW (WT01); and

(c) 220 Pounds of residues from a cleanup of acutely hazardous waste and/or toxic EHW (WT01).

(5) Accumulation of waste in containers.

(a) Condition of containers. If a container holding dangerous waste is not in good condition (e.g., severe corroding or rusting or flaking or scaling, and/or apparent structural defects) or if it begins to leak or is leaking, the generator must transfer the dangerous waste to a container that is in good condition and does not leak, and continue to manage that container and waste in compliance with the conditions for exemption of this section. In addition, the owner or operator

must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-960.

(b) Compatibility of waste with container. The generator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the dangerous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(c) Management of containers.

(i) A container holding dangerous waste must be closed at all times, except when it is necessary to add or remove waste.

(ii) A container holding dangerous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(iii) A minimum thirty-inch aisle space separation is required between rows of containers. A row of containers must be no more than two wide and allow for unobstructed inspection of each container.

(d) Inspections. The generator must conduct "weekly inspections," as defined in WAC 173-303-040, of each central accumulation area looking for leaking containers and for deterioration of containers and the containment system caused by corrosion, deterioration, or other factors. The generator must keep a written or electronic inspection log including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection. The generator must take remedial action in accordance with (a) of this subsection if deterioration or leaks are detected.

(e) Secondary containment. For container accumulation the department requires that the central accumulation area(s) include secondary containment in accordance with WAC 173-303-630(7).

(f) Special requirements for ignitable or reactive waste.

(i) Containers holding reactive waste exhibiting a characteristic specified in WAC 173-303-090 (7)(a)(vi), (vii) or (viii) must be stored in a manner equivalent to separation distances for storage of explosives in the International Fire Code, 2015 edition, or the version adopted by the local fire district.

(ii) The generator must design, operate, and maintain ignitable waste and reactive waste (other than a reactive waste which must meet the requirements of (f)(i) of this subsection) container storage in a manner equivalent with the International Fire Code. Where no specific standard or requirements are specified in the International Fire Code, or in existing state or local fire codes, applicable sections of NFPA 30 "Flammable and Combustible Liquids Code" must be used. The generator must also comply with the requirements of WAC 173-303-395 (1)(d).

(g) Special requirements for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials must not be placed in the same container, unless WAC 173-303-395 (1)(b) is complied with.

(ii) Dangerous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(iii) A storage container holding a dangerous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. Containment systems for incompatible wastes must be separate.

(h) Closure.

(i) At closure, all dangerous waste and dangerous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil, containing or contaminated with dangerous waste or dangerous waste residues must be decontaminated or removed.

(ii) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

(6) Accumulation of dangerous waste in tanks.

(a) Operating requirements. Generators must comply with the following general operating requirements:

(i) Treatment or storage of dangerous waste in tanks must comply with WAC 173-303-395(1).

(ii) Dangerous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(iii) Uncovered tanks must be operated to ensure at least sixty centimeters (two feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top sixty centimeters (two feet) of the tank.

(iv) Where dangerous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or bypass system to a standby tank).

Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).

(b) Inspections. Generators must inspect the following:

(i) Discharge control equipment (e.g., waste feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(ii) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(iii) The level of waste in the tank at least once each operating day to ensure compliance with (a)(iii) of this subsection;

(iv) "Weekly inspections" as defined in WAC 173-303-040, must be conducted on the construction materials of the tank to detect corrosion or leaking of fixtures or seams; and

(v) "Weekly inspections," as defined in WAC 173-303-040, must be conducted on the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environ-

mental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(vi) A generator accumulating dangerous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must conduct "weekly inspections" as defined in WAC 173-303-040, where applicable, the areas identified in (b)(i) through (v) of this subsection.

(c) Closure.

(i) Generators accumulating dangerous waste in tanks must, upon closure of the facility, remove all dangerous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the generator can demonstrate, in accordance with WAC 173-303-070 (2)(a) or (b), that any solid waste removed from the tank is not a dangerous waste, then it must manage such waste in accordance with all applicable provisions of this chapter.

(ii) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

(d) Special conditions for ignitable or reactive waste. Generators must comply with the following special requirements for ignitable or reactive waste:

(i) Ignitable or reactive waste must not be placed in a tank, unless:

(A) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that:

(I) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090 (5) or (7); and

(II) WAC 173-303-395(1) is complied with.

(B) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(C) The tank is used solely for emergencies.

(ii) A generator who treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in NFPA 30, "Flammable and Combustible Liquids Code."

(e) Special requirements for incompatible waste. Generators must comply with the following special requirements for incompatible wastes:

(i) Incompatible wastes, or incompatible wastes and materials, (see 40 C.F.R. Part 265, Appendix V for examples) must not be placed in the same tank, unless WAC 173-303-395(1) is complied with.

(ii) Dangerous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless WAC 173-303-395(1) is complied with.

(7) Accumulation of dangerous waste on drip pads. If the waste is placed on drip pads, the generator must comply with the following:

(a) WAC 173-303-675;

(b) Remove all wastes from the drip pad and associated collection system at least once every ninety days;

(c) Waste removed from drips pads and associated collection systems must be sent immediately to:

(i) An off-site designated facility; or

(ii) An on-site permitted facility; or

(iii) An on-site central accumulation area where the waste is managed in compliance with the on-site central accumulation area regulations in this section for the remainder of the one hundred eighty day accumulation time limit for medium quantity generators. (Example: A generator removes waste from the drip pad at eighty days, the generator is then allowed to further accumulate that waste in its central accumulation area for up to an additional one hundred days);

(d) Maintain the following records on site and readily available for inspection:

(i) The original start date the waste was first placed on, or began to accumulate on, the drip pad;

(ii) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and

(iii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(8) Accumulation of dangerous waste in containment buildings. If the waste is placed in containment buildings, the generator must comply with the following:

(a) 40 C.F.R. Part 265, Subpart DD, which is incorporated by reference; and

(b) Labeling.

(i) The generator must label its containment building with the words "Dangerous Waste" or "Hazardous Waste" in a conspicuous place easily visible and legible to employees, visitors, emergency responders, waste handlers, or other persons on site. The label must be visible and legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(ii) The generator must also, in a conspicuous place easily visible and legible to employees, visitors, emergency responders, waste handlers, or other persons on site, provide its containment building with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The indication must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering is a minimum of one-half inch in height; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents.

(c) Records. The generator must also maintain the following records at the facility:

(i) The independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101. This certification must be placed in the generator's files no later than sixty days after the date of initial operation of the unit. Where subpart G and H are referenced in 40 C.F.R. 265.1102, replace them with WAC 173-303-610 and 173-303-620.

(ii) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(iii) Documentation that the unit is emptied at least once every ninety days.

(iv) Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(9) Labeling and marking of containers and tanks in central accumulation areas.

(a) A generator must mark or label its containers as follows:

(i) With the date upon which each period of accumulation begins is marked and clearly visible for inspection on each container.

(ii) With the words "Dangerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(iii) With an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum one-half inch in size; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel, and employees.

(b) Generators accumulating dangerous waste in tanks must do the following:

(i) Clearly mark or label its tanks with the words "Dangerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in size.

(ii) Clearly mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in size; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazard associated with the contents of the tanks for the public, emergency response personnel, and employees.

(iii) Use inventory logs, monitoring equipment, or other records to demonstrate that dangerous waste has been emptied within one hundred eighty days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of

dangerous waste entering the tank daily exit the tank within one hundred eighty days of first entering.

(iv) Keep inventory logs or records with the above information on site and readily available for inspection.

(c) The department may also require that a sign be posted at each entrance to the accumulation area, bearing the legend, "danger - unauthorized personnel keep out," or an equivalent legend, written in English, and legible from a distance of twenty-five feet or more.

(10) Land disposal restrictions. The generator complies with all the applicable requirements under 40 C.F.R. Part 268.

(11) Preparedness and prevention.

(a) Maintenance and operation of facility. The generator must design, construct, maintain, and operate its facility to minimize the possibility of fire, explosion, or any unplanned sudden or nonsudden release of dangerous waste or dangerous waste constituents to air, soil, surface, or groundwater which could threaten public health or the environment. This subsection describes preparations and preventive measures which help avoid or mitigate such situations.

(b) Required equipment. All areas where dangerous waste is either generated or accumulated must be equipped with the following items in (b)(i) through (iv) of this subsection, unless it can be demonstrated to the department that none of the hazards posed by the waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A medium quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies:

(i) An internal communications or alarm system capable of providing immediate emergency instructions (voice or signal) instruction to facility personnel;

(ii) A device, such as a telephone (immediately available at the scene of operation) or a hand-held, two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as those using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarms. Personnel must have immediate access to the signaling devices described in the situations below:

(i) Whenever dangerous waste is being poured, mixed, spread, or otherwise handled, all personnel involved must have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either

directly or through visual or voice contact with another employee, unless such a device is not required in (b) of this subsection;

(ii) If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone or a hand-held, two-way radio, capable of summoning external emergency assistance, unless such a device is not required in subsection (11)(b) of this section.

(e) Aisle space. The generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the department that aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(i) The generator must attempt to make the following arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, as appropriate for the type and quantity of waste handled at its facility and the potential need for the services of these organizations, unless the hazards posed by wastes handled at the facility would not require these arrangements:

(A) The generator attempting to make arrangements with its local fire department must determine the potential need for the service of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals;

(B) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of dangerous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to, and roads inside the facility and possible evacuation routes;

(C) Arrangements to familiarize local hospitals with the properties of dangerous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility;

(D) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(E) Where more than one party might respond to an emergency, agreements designating primary emergency authority and agreements with any others to provide support to the primary emergency authority.

(ii) The generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(iii) A facility possessing twenty-four-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code with the facility's locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the generator's operating record.

(12) Emergency procedures and training. The generator must comply with the following conditions for those areas of the generator's facility where dangerous waste is generated and accumulated:

(a) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in (d) of this subsection. This employee is the emergency coordinator.

(b) The generator must post the following information next to all emergency communication devices (including telephones, two-way radios, etc.) or in each area directly involved in the generation and accumulation of dangerous waste:

(i) The name and telephone number of the emergency coordinator;

(ii) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or their designee must respond to any emergencies that arise. The applicable responses are as follows:

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(ii) In the event of a spill, contain the flow of dangerous waste to the extent possible, and as soon as is practical, clean up the dangerous waste and any contaminated materials or soil;

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached waters of the state, the generator must immediately notify the department and the National Response Center (using their twenty-four-hour toll free number 1-800-424-8802). The report must include the following information:

(A) The name, address, and EPA/state identification number of the generator;

(B) Date, time, and type of incident (e.g., spill or fire);

(C) Quantity and type of hazardous waste involved in the incident;

(D) Extent of injuries, if any; and

(E) Estimated quantity and disposition of recovered materials, if any.

(13) General inspections. The generator must inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of dangerous waste constituents to the environment, or a threat to human health.

(a) The generator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b) The generator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and

structural equipment that help prevent, detect, or respond to hazards to the public health or the environment. In addition:

- (i) The schedule must be kept at the facility;
- (ii) The schedule must identify the types of problems to look for during inspections;
- (iii) The generator must keep a written or electronic inspection log or summary, including at least the date and time of the inspection, the printed name and handwritten or electronic signature of the inspector, a notation of the observations made, an account of spills or discharges in accordance with WAC 173-303-145, and the date and nature of any repairs or remedial actions taken. The log or summary must be kept at the facility for at least five years from the date of inspection.

(c) The generator must remedy any problems revealed by the inspection, on a schedule which prevents hazards to the public health and environment. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(14) Rejected load. A generator who sends a shipment of dangerous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of WAC 173-303-370(5) may accumulate the returned load on site in accordance with all of the conditions for exemption, except for subsection (15) of this section. Upon receipt of the returned shipment, the generator must sign:

- (a) Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or
- (b) Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(15) Episodic event. A generator experiencing an episodic event may accumulate dangerous waste generated from the episodic event in accordance with WAC 173-303-173 in lieu of this section.

#### NEW SECTION

**WAC 173-303-173 Alternative standards for episodic generation.** (1) Applicability. This section is applicable to small quantity generators and medium quantity generators as defined in WAC 173-303-040.

(2) Definitions for this section. The following definitions apply to this section:

(a) **Episodic event** means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of dangerous wastes that exceeds the calendar month quantity exclusion limits for the generator's usual category.

(b) **Planned episodic event** means an episodic event that the generator planned and prepared for, including tank cleanouts, short-term project, and removal of excess chemical inventory.

(c) **Unplanned episodic event** means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spill, or "acts of nature," such as a tornado, hurricane, earthquake, or flood.

(3) Conditions for a small quantity generator. A small quantity generator may maintain its existing generator category for dangerous waste generated during an episodic event provided that the generator complies with all the following conditions:

(a) Number of events. The small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under subsection (5) of this section.

(b) Notification. The small quantity generator must notify the Department's Hazardous Waste & Toxics Reduction Program's applicable regional office no later than thirty calendar days prior to initiating a planned episodic event using and completing a Washington State Dangerous Waste Site Identification Form, according to the directions on that form. In the event of an unplanned episodic event, the generator must notify the Department's Hazardous Waste & Toxics Reduction Program's appropriate regional office within seventy-two hours of the unplanned event via email or fax and subsequently submit to the department within thirty days of the notification a completed Washington State Dangerous Waste Site Identification Form, according to the directions on that form. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of dangerous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with twenty-four-hour telephone access to discuss the notification submittal or respond to any emergency in compliance with WAC 173-303-172 (12)(a) and 173-303-145(3).

(c) EPA/state identification number. The small quantity generator must have an EPA/state identification number or obtain an identification number using and completing a Washington State Dangerous Waste Site Identification Form.

(d) Annual report. The small quantity generator must submit an annual report in accordance with WAC 173-303-220 covering all dangerous waste generated during the calendar year of the episodic event.

(e) Pollution prevention. Dangerous waste generated from an episodic event is subject to pollution prevention planning and fees as required in chapters 173-307 and 173-305 WAC, respectively.

(f) Accumulation. A small quantity generator is prohibited from accumulating dangerous waste generated from an episodic event on drip pads and in containment buildings. The accumulating of dangerous waste generated from an episodic event shall only occur in containers or tanks and the generator comply with the following:

(i) Containers. The small quantity generator accumulating in containers must mark or label its containers as follows:

(A) With the date upon which the episodic event began, clearly visible for inspection on each container.

(B) With the words "Episodic Dangerous Waste" or "Episodic Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(C) With an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic). The indication label or marking must be:

(I) Legible and recognizable from a distance of twenty-five feet or the lettering size is one-half inch in height; and

(II) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel, and employees.

(ii) Tanks. The small quantity generator accumulating episodic dangerous waste in tanks must do the following:

(A) Clearly mark or label the tanks with the words "Episodic Dangerous Waste" or "Episodic Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(B) Clearly mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic). The indication label or marking must be:

(I) Legible and recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(II) Include descriptive word(s) and/or pictogram(s) that identifies the hazard associated with the contents of the tank for the public, emergency response personnel, and employees.

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins.

(D) Keep inventory logs or records with the above information on site and readily available for inspection upon request.

(iii) Dangerous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or release of dangerous waste or hazardous substance or dangerous waste constituent to the air and environment.

(iv) Containers must be in good condition and compatible with the dangerous waste being accumulated therein.

(v) Containers must be kept closed except to add or remove waste.

(vi) Tanks must be in good condition and compatible with the dangerous waste accumulated therein.

(vii) Tanks must have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste fed cutoff system or bypass system to a standby tank when dangerous waste is continuously fed into the tank).

(viii) Inspections. Tanks must be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(g) Manifest. The small quantity generator must comply with the hazardous waste manifest provision of WAC 173-303-180 when it sends its dangerous waste generated from the episodic event off site to a designated facility as defined in WAC 173-303-040.

(h) Treatment. The small quantity generator is prohibited from treating dangerous waste generated from an episodic event.

(i) Off-site shipments. The small quantity generator has up to sixty calendar days from the start of the episodic event to manifest and send its dangerous waste generated from the episodic event to a designated facility as defined in WAC 173-303-040.

(j) Recordkeeping. Small quantity generators must maintain the following records for five years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of dangerous wastes generated during the event;

(iv) A description of how the dangerous waste was managed as well as the name of the designated facility, as defined in WAC 173-303-040, that received the dangerous waste;

(v) Name(s) of dangerous waste transporters; and

(vi) An approval letter from the department if the generator petitioned to conduct one additional episodic event per calendar year.

(4) Conditions for medium quantity generators. A medium quantity generator may maintain its existing generator category for dangerous waste generated during an episodic event provided that the generator complies with all the following conditions:

(a) Number of events. The medium quantity generator is limited to one episodic event per calendar year, unless a petition is granted under subsection (5) of this section.

(b) Notification. The medium quantity generator must notify the Department's Hazardous Waste & Toxics Reduction Program's applicable regional office no later than thirty calendar days prior to initiating a planned episodic event using and completing a Washington State Dangerous Waste Site Identification Form, according to the directions on that form. In the event of an unplanned episodic event, the generator must notify the Department's Hazardous Waste & Toxics Reduction Program's appropriate regional office within seventy-two hours of the unplanned event via email or fax and subsequently submit to the department within thirty days of the notification a completed Washington State Dangerous Waste Site Identification Form, according to the directions on that form. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of dangerous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with twenty-four-hour telephone access to discuss the notification submitted or respond to any emergency in compliance with WAC 173-303-172 (12)(a) and 173-303-145(3).

(c) EPA/state identification number. The medium quantity generator must have an EPA/state identification number or obtain an identification number using and completing a Washington State Dangerous Waste Site Identification Form.

(d) Annual report. The medium quantity generator must submit an annual report in accordance with WAC 173-303-220 covering all dangerous waste generated during the calendar year of the episodic event.

(e) Pollution prevention. Dangerous waste generated from an episodic event is subject to pollution prevention planning and fees as required in chapters 173-307 and 173-305 WAC, respectively.

(f) Accumulation. A medium quantity generator is prohibited from accumulating dangerous waste generated from an episodic event on drip pads and in containment buildings. The accumulating of dangerous waste generated from an episodic event shall only occur in containers or tanks and the generator comply with the following:

(i) Containers. The medium quantity generator accumulating episodic dangerous waste in containers must meet the standards in WAC 173-303-172(5) and must mark or label its containers as follows:

(A) With the date upon which the episodic event began, clearly visible for inspection on each container.

(B) With the words "Episodic Dangerous Waste" or "Episodic Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(C) With an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic). The indication label or marking must be:

(I) Legible and recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(II) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel, and employees.

(ii) Tanks. The medium quantity generator accumulating episodic dangerous waste in tanks must meet the standards in WAC 173-303-172(6) and must do the following:

(A) Clearly mark or label its tanks with the words "Episodic Dangerous Waste" or "Episodic Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(B) Clearly mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic). The indication label or marking must be:

(I) Legible and recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(II) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the tanks for the public, emergency response personnel, and employees.

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends.

(D) Keep inventory logs or records with the above information on site and readily available for inspection upon request.

(g) The medium quantity generator must treat dangerous waste generated from an episodic event on site or manifest

and ship such dangerous waste off site to a designated facility (as defined by WAC 173-303-040) within sixty calendar days from the start of the episodic event.

(h) Recordkeeping. The medium quantity generator must maintain the following records for five years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of dangerous wastes generated during the event;

(iv) A description of how the dangerous waste was managed as well as the name of the designated facility, as defined in WAC 173-303-040, that received the dangerous waste;

(v) Name(s) of dangerous waste transporters; and

(vi) An approval letter from the department if the generator petitioned to conduct one additional episodic event per calendar year.

(5) Petition to manage one additional episodic event per calendar year.

(a) A generator may petition the department for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(i) If a small quantity generator or a medium quantity generator has already held a planned episodic event in a calendar year, the generator may petition the department for an additional unplanned episodic event in that calendar year within seventy-two hours of the unplanned event.

(ii) If a small quantity generator or medium quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the department for an additional planned episodic event in that calendar year.

(b) The petition must include the following:

(i) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(ii) The estimated amount and type(s) of dangerous waste to be managed from the event;

(iii) How the dangerous waste is to be managed;

(iv) The estimated length of time needed to complete management of the dangerous waste generated from the episodic event not to exceed sixty days; and

(v) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition must be sent to the Department's Hazardous Waste & Toxics Reduction Program's appropriate regional office for review and approval.

#### NEW SECTION

**WAC 173-303-174 Satellite accumulation area regulations for medium quantity generators and large quantity generators.** (1) A generator may accumulate as much as fifty-five gallons of dangerous waste or either one quart of liquid acutely hazardous waste or 2.2 lbs. of solid acutely hazardous waste (as defined in WAC 173-303-040) in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040). The satellite accumulation area must be under the control of the operator of the process generating the

waste or secured at all times to prevent improper additions of wastes to a satellite container. A generator may accumulate waste without a permit, or without complying with WAC 173-303-400, 173-303-600, 173-303-692, and 173-303-800, provided that all the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in WAC 173-303-172 and 173-303-200, except as required by (h) and (i) of this subsection. The conditions for exemption for satellite accumulation are:

(a) Condition of containers. If a container holding dangerous waste is not in good condition (e.g., severe corroding or rusting or flaking or scaling, and/or apparent structural defects) or if it begins to leak, the generator must transfer the dangerous waste to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with WAC 173-303-172 or 173-303-200, as applicable. In addition, the owner or operator must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-360.

(b) Compatibility of waste with containers. The generator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the dangerous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(c) Management of containers.

(i) A container holding dangerous waste must be closed at all times, except:

(A) When it is necessary to add or remove waste; or

(B) When temporary venting of a container is necessary, such as:

(I) For the proper operation of equipment; or

(II) To prevent dangerous situations, such as build-up of extreme pressure.

(ii) A container holding dangerous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(d) Special requirements for ignitable or reactive waste. Containers holding reactive waste exhibiting a characteristic specified in WAC 173-303-090 (7)(a)(vi) through (viii) must be stored in a manner equivalent to the separation distances for storage of explosives in the International Fire Code, 2015 edition, or the version adopted by the local fire district.

(e) Special requirements for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials must not be placed in the same container, unless WAC 173-303-395 (1)(b) is complied with.

(ii) Dangerous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(iii) A storage container holding a dangerous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. Containment systems for incompatible wastes must be separate.

(f) Container labeling or marking. A generator must clearly label or mark each container of dangerous waste with the following:

(i) The words "Dangerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(ii) An indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel, and employees.

(g) Accumulation limits. When the accumulation limits listed in this subsection are met:

(i) The container(s) must be marked immediately with the accumulation start date; and

(ii) Moved within three consecutive calendar days to a permitted on-site designated storage area or an on-site central accumulation area or to a permitted off-site designated facility; and

(iii) During the three consecutive calendar day period the generator must continue to comply with all the conditions for exemption for satellite accumulation in this section.

(h) All satellite accumulation areas operated by medium quantity generators must meet the preparedness and prevention regulations and the emergency procedures in WAC 173-303-172.

(i) All satellite accumulation areas operated by large quantity generators must meet the preparedness, prevention and contingency regulations and emergency procedures in WAC 173-303-201.

(2) On a case-by-case basis the department may require the satellite accumulation area to be managed in accordance with all or some of the requirements under WAC 173-303-172 or 173-303-200 and secondary containment requirements of WAC 173-303-630(7), if the nature of the wastes being accumulated, a history of spills or releases from accumulated containers, or other factors are determined by the department to be a threat or potential threat to human health or the environment.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-180 Manifest.** A generator who transports, or offers for transport a dangerous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected dangerous waste load, must follow all applicable procedures described in this section.

(1) Form and contents of dangerous waste manifests. 40 C.F.R. Part 262 Appendix - Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A

and Their Instructions) is incorporated by reference. The manifest must be EPA Form 8700-22 and, if necessary, EPA Form 8700-22A. The manifest must be prepared in accordance with the instructions for these forms, as described in the uniform manifest Appendix of 40 C.F.R. Part 262.

(a) A generator must designate on the manifest one facility that is permitted to handle the waste described on the manifest.

(b) A generator may also designate on the manifest one alternate facility that is permitted to handle ~~((his or her))~~ their waste in the event an emergency prevents delivery of the waste to a primary designated facility.

(c) If the transporter is unable to deliver the dangerous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(2) The manifest must consist of enough copies to provide the generator, each transporter, and the designated facility owner/operator with a copy for their records, and another copy to be returned to the generator.

(3) Manifest procedures.

(a) The generator must:

(i) Sign and date the manifest certification by hand;

(ii) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(iii) Retain one copy in accordance with WAC 173-303-210, Generator recordkeeping.

(b) The generator must give the remaining manifest copies to the transporter.

(c) For shipments of dangerous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of dangerous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(i) The next nonrail transporter, if any; or

(ii) The designated facility if transported solely by rail; or

(iii) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of federally regulated hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(f) For rejected shipments of dangerous waste or container residues contained in nonempty containers that are returned to the generator by the designated facility (following the procedures of WAC 173-303-370 (5)(f)), the generator must:

(i) Sign either:

(A) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(B) Item 18c of the original manifest if the original manifest is used for the returned shipment.

(ii) Provide the transporter a copy of the manifest;

(iii) Within thirty days of delivery of the rejected shipment or container residues contained in nonempty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(iv) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

(4) Special requirements for shipments to the Washington EHW facility at Hanford.

(a) All generators planning to ship dangerous waste to the EHW facility at Hanford must notify the facility in writing and by sending a copy of the prepared manifest prior to shipment.

(b) The generator must not ship any dangerous waste without prior approval from the EHW facility. The state operator may exempt classes of waste from the requirements of WAC 173-303-180 (4)(a) and (b) where small quantities or multiple shipments of a previously approved waste are involved, or there exists an emergency and potential threat to public health and safety.

(5) The requirements of this section and WAC 173-303-190(2) do not apply to the transport of dangerous wastes on a public or private right of way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right of way: Provided, That ecology has approved an alternative paper tracking system that serves the purpose of a manifest. Notwithstanding WAC 173-303-240(2), the generator or transporter must comply with the requirements for transporters set forth in WAC 173-303-270 and 173-303-145 in the event of a discharge of dangerous waste on a public or private right of way.

(6) Special instructions for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under the 49 C.F.R. hazardous material regulations. For purposes of completing the uniform hazardous waste manifest, Item 9b, and Item 28 if continuation sheet 8700-22A is used, or to describe a state-only dangerous waste on a shipping paper, the shipping description must include the following in sequence with no additional information interspersed:

(a) Material Not Regulated by DOT;

(b) Washington State Dangerous Waste Only followed by the appropriate criteria designation of the waste that is either toxic, persistent, solid corrosive or a combination of these entered in parentheses;

(c) Shipping description examples: Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic, Persistent); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Solid Corrosive).

(7) Manifest tracking numbers, manifest printing, and obtaining manifests.

(a) 40 C.F.R. 262.21 (a) through (f) and (h) through (m) is incorporated by reference. EPA requirements for printing manifests for use or distribution are included in this section.

(b) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of 40 C.F.R. 262.21. A registered source may be a:

- (i) State agency;
- (ii) Commercial printer;
- (iii) Dangerous waste generator, transporter or TSDF; or
- (iv) Dangerous waste broker or other preparer who prepares or arranges shipments of dangerous waste for transportation.

(c) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(8) Waste minimization certification. A generator who initiates a shipment of dangerous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment"; or

(b) "I am a medium quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford." Note that a Washington state medium quantity generator regulated under WAC ((173-303-202)) 173-303-172 is the type of generator referred to where the manifest states "(b) if I am a small quantity generator", due to the different term used by EPA.

(9) Use of electronic manifest. In lieu of using the manifest form specified in subsection (1) of this section, a person may prepare and use an electronic manifest, provided that the person:

(a) Complies with the requirements of 40 C.F.R. Part 3.10 for the reporting of electronic documents to EPA; and

(b) Complies with the requirements in subsections (10) and (11) of this section.

(10) Legal equivalence to paper manifests.

(a) Electronic manifests that are obtained, completed, and transmitted in accordance with subsection (9) of this section and used in accordance with this section are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in this section to obtain, complete, sign, provide, use or retain a manifest.

(i) Any requirement in this section to sign a manifest or manifest certification by hand, or to obtain a handwritten sig-

nature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of subsection (11) of this section.

(ii) Any requirement in this section to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iii) Any requirement in this section for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production upon request.

(iv) A generator may not be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the dangerous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of dangerous waste shipments involving any dangerous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the hazardous materials regulation on shipping papers for carriage by public highway requires shippers of hazardous material to supply a paper document for compliance with 49 C.F.R. Part 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest. In addition, the one printed copy of the electronic manifest must provide the information required in subsection (6) of this section for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and as state listed WPCB and WSC2.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a dangerous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the dangerous waste from the generator, then the generator must obtain and complete a paper manifest (EPA form 8700-22) and if necessary, a continuation sheet (EPA form 8700-22A) in accordance with the manifest instructions and comply with subsections (1) through (8) of this section from this point forward.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a dangerous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of this

signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under (d) of this subsection.

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees will be published by EPA as an appendix to 40 C.F.R. Part 262.

(11) Electronic manifest signatures. Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature applicable under state, EPA and other federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

WAC 173-303-190 Preparing dangerous waste for transport. The generator must fulfill the following requirements before transporting off-site or offering for off-site transport any dangerous waste.

(1) Packaging. The generator must package all dangerous waste for transport in accordance with United States DOT regulations on packaging, 49 C.F.R. Parts 173, 178, and 179.

(2) Labeling. The generator must label each package in accordance with United States DOT regulations, 49 C.F.R. Part 172.

(3) Marking. The generator must:

(a) Mark each package of dangerous waste in accordance with the applicable United States DOT regulations on hazardous materials under 49 C.F.R. Part 172; and

(b) Mark each container of one hundred nineteen gallons or less of dangerous waste used in such transportation with the following, or equivalent words and information in accordance with 49 C.F.R. 172.304:

HAZARDOUS WASTE - State and federal law prohibits improper disposal. If found, contact the nearest police or public safety authority, and the Washington state department of ecology or the United States Environmental Protection Agency.

Generator's Name and Address

.....  
.....  
.....

Generator's EPA Identification Number

Manifest Tracking Number

Dangerous Waste Number(s)

.....

(4) Placarding. The generator must placard, or offer the initial transporter the appropriate placards according to United States DOT regulations for hazardous materials under 49 C.F.R. Part 172, Subpart F.

(5) State-only dangerous waste that is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under 49 C.F.R. must fulfill the following requirements before transport:

(a) Package in a nonleaking, nonsieveable container or in a package that is equivalent to the manufacturing and testing specifications for packagings and containers of 49 C.F.R. Parts 173, 178 and 179.

(b) Mark each package containing one thousand gallons or less with the following:

(i) Washington State Dangerous Waste-State law prohibits improper disposal. If found, contact the nearest police or public safety authority, and the Washington State Department of Ecology. The generator's name and address and manifest number must also be included; and

(ii) The state shipping description as described in WAC 173-303-180(6).

(c) Use of any other markings for a state-only dangerous waste is prohibited.

(6) State-only dangerous waste that is also regulated as a hazardous material under 49 C.F.R. must be packaged, labeled and marked in accordance with WAC 173-303-190 (1), (2), (3) and (5)(b)(i).

(7) A generator may use a nationally recognized electronic system, such as bar coding, to identify the dangerous waste number(s) as required in subsections (3)(b) and (8) of this section.

(8) Lab packs that will be incinerated in compliance with 40 C.F.R. Part 268.42(c) as incorporated by reference in WAC 173-303-140(2) are not required to be marked with dangerous waste number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

(9) Liquids in landfills prohibition. The placement of bulk or noncontainerized liquid dangerous waste or dangerous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal liquids must meet additional requirements of WAC 173-303-140 (4)(b).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

WAC 173-303-200 ((Accumulating) Conditions for exemption for a large quantity generator that accumulates dangerous waste ((on-site)). ((1) A generator, not to include transporters as referenced in WAC 173-303-240(3), may accumulate dangerous waste on-site without a permit for ninety days or less after the date of generation, provided that:

(a) All such waste is shipped off-site to a designated facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845 or recycled or treated on-site in ninety days or less. The department may, on a case-by-case basis, grant a maximum thirty day extension to this ninety day period if dangerous wastes must remain on-site due to unforeseen, temporary and uncontrollable circumstances. A generator who accumulates

dangerous waste for more than ninety days is an operator of a storage facility and is subject to the facility requirements of this chapter and the permit requirements of this chapter as a storage facility unless he has been granted an extension to the ninety-day period allowed pursuant to this subsection;

(b) The waste is placed:

(i) In containers and the generator complies with WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a). For container accumulation (including satellite areas as described in subsection (2) of this section), the department may require that the accumulation area include secondary containment in accordance with WAC 173-303-630(7), if the department determines that there is a potential threat to public health or the environment due to the nature of the wastes being accumulated, or due to a history of spills or releases from accumulated containers. In addition, any new container accumulation areas (but not including new satellite areas, unless required by the department) constructed or installed after September 30, 1986, must comply with the provisions of WAC 173-303-630(7); and/or

(ii) In tanks and the generator complies with 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8)(e) and the second sentence of WAC 173-303-640 (8)(a). (Note: A generator, unless otherwise required to do so, does not have to prepare a closure plan, a cost estimate for closure, or provide financial responsibility for his tank system to satisfy the requirements of this section.) Such a generator is exempt from the requirements of WAC 173-303-620 and 173-303-610, except for WAC 173-303-610 (2) and (5); and/or

(iii) On drip pads and the generator complies with WAC 173-303-675 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) In containment buildings and the generator complies with 40 C.F.R. Part 265 Subpart DD, which is incorporated by reference, and the generator has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record no later than sixty days after the date of initial operation of the unit. Where subpart G and H are referenced in 40 C.F.R. 265.1102, replace them with WAC 173-303-610 and 173-303-620. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every ninety days.

(e) The date upon which each period of accumulation begins is marked and clearly visible for inspection on each container;

(d) While being accumulated on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public (note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate). The department may also require that a sign be posted at each entrance to the accumulation area, bearing the legend, "danger—unauthorized personnel keep out," or an equivalent legend, written in English, and legible from a distance of twenty-five feet or more; and

(e) The generator complies with the requirements for facility operators contained in:

(i) WAC 173-303-330 through 173-303-360 (personnel training, preparedness and prevention, contingency plan and emergency procedures, and emergencies) except for WAC 173-303-335 (Construction quality assurance program) and WAC 173-303-355 (SARA Title III coordination); and

(ii) WAC 173-303-320 (1), (2)(a), (b), (d), and (3) (general inspection); and

(f) The generator complies with all applicable requirements under 40 C.F.R. Part 268.

(g) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

(2) Satellite accumulation:

(a) A generator may accumulate as much as fifty-five gallons of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040). The satellite area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes to a satellite container. Satellite accumulation is allowed without a permit provided the generator:

(i) Complies with WAC 173-303-630 (2), (4), (5) (a) and (b), (8)(a), and (9) (a) and (b); and

(ii) Complies with subsection (1)(d) of this section.

(b) When fifty-five gallons of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) is accumulated, the container(s) must be marked immediately with the accumulation date and moved within three days to a designated storage or accumulation area.

(c) On a case-by-case basis the department may require the satellite area to be managed in accordance with all or some of the requirements under subsection (1) of this section, if the nature of the wastes being accumulated, a history of spills or releases from accumulated containers, or other factors are determined by the department to be a threat or potential threat to human health or the environment.

(3) For the purposes of this section, the ninety-day accumulation period begins on the date that:

- (a) The generator first generates a dangerous waste; or
- (b) The quantity (or aggregated quantity) of dangerous waste being accumulated by a small quantity generator first exceeds the accumulation limit for such waste (or wastes); or
- (c) Fifty-five gallons of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) is accumulated in a satellite accumulation area.

(4)(a) A generator who generates 2200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, may accumulate F006 waste on site for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:

- (i) The generator has implemented pollution prevention practices that reduce the amount of any dangerous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;
- (ii) The F006 waste is legitimately recycled through metals recovery;
- (iii) No more than 44,000 pounds of F006 waste is accumulated on-site at any one time; and
- (iv) The F006 waste is managed in accordance with the following:

(A) The F006 waste is placed:

(I) In containers and the generator complies with the applicable requirements of WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a); and/or

(H) In tanks and the generator complies with the applicable requirements of 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8)(c) and the second sentence of WAC 173-303-640 (8)(a); and/or

(III) In containment buildings and the generator complies with subpart DD of 40 C.F.R. Part 265 which is incorporated by reference at WAC 173-303-400(3), and has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

- A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the generator is complying with the procedures; or

- Documentation that the unit is emptied at least once every one hundred eighty days.

(B) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 C.F.R. Part 265, except for 265.111 and 265.114 which are incorporated by reference at WAC 173-303-400(3).

(C) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Dangerous Waste"; and

(E) The generator complies with the requirements for owners or operators in WAC 173-303-330, 173-303-340, and 173-303-350, and with 40 C.F.R. 268.7 (a)(5) which is incorporated by reference at WAC 173-303-140 (2)(a).

(b) A generator who generates 2200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than ninety days, but not more than two hundred seventy days without a permit or without having interim status if the generator complies with the requirements of (a)(i) through (iv) of this subsection:

(c) A generator accumulating F006 in accordance with (a) and (b) of this subsection who accumulates F006 waste on-site for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than 44,000 pounds of F006 waste on-site is an operator of a storage facility and is subject to the facility and permit requirements of this chapter unless the generator has been granted an extension to the one hundred eighty-day (or two hundred seventy-day if applicable) period or an exception to the 44,000 pound accumulation limit. Such extensions and exceptions may be granted by the department if F006 waste must remain on-site for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than 44,000 pounds of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the department on a case-by-case basis.

(5) A generator who sends a shipment of dangerous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of WAC 173-303-370(5) may accumulate the returned waste on-site in accordance with subsection (1) of this section or WAC 173-303-201, depending on the amount of dangerous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

- (a) Sign Item 18e of the manifest, if the transporter returned the shipment using the original manifest; or

- (b) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.)) Large quantity generators, not to include transporters as referenced in WAC 173-303-240(3), may accumulate dangerous waste on site without a permit or interim status, and without complying with the requirements of WAC 173-303-600 provided that all

of the following conditions for exemption listed in this section are met.

(1) Off-site shipments. All dangerous waste is shipped off site to a designated facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845 or recycled or treated on site in ninety days or less. A generator who accumulates dangerous waste for more than ninety days is an operator of a storage facility and is subject to the facility requirements of this chapter and the permit requirements of this chapter as a storage facility unless they have been granted an extension to the ninety-day period allowed pursuant to subsection (2) of this section:

(2) Accumulation time limit.

(a) The generator accumulates dangerous waste on site for no more than ninety days unless:

(i) The department has granted a maximum thirty-day extension to this ninety-day period. The department may, on a case-by-case basis, grant a maximum thirty-day extension to this ninety-day period if dangerous waste must remain on site due to unforeseen, temporary and uncontrollable circumstances; or

(ii) The F006 accumulation conditions for exemption in subsection (13) of this section are met.

(b) For the purposes of this section, the ninety-day accumulation period begins on the date that:

(i) The generator first generates a dangerous waste; or

(ii) The quantity (or aggregated quantity) of dangerous waste being accumulated by a small quantity generator first exceeds the accumulation limit for such waste (or wastes); or

(iii) The generator exceeds its satellite accumulation limits prescribed in WAC 173-303-174(1).

(3) Accumulation of waste in containers.

(a) Condition of containers. If a container holding dangerous waste is not in good condition (e.g., severe corroding or rusting or flaking or scaling, and/or apparent structural defects) or if it begins to leak or is leaking, the generator must transfer the dangerous waste from this container to a container that is in good condition and does not leak and continue to manage that container and waste in compliance with the conditions for exemption in this section. In addition, the owner or operator must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-360.

(b) Compatibility of waste with container. The generator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the dangerous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(c) Management of containers.

(i) A container holding dangerous waste must be closed at all times, except when it is necessary to add or remove waste.

(ii) A container holding dangerous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(iii) A minimum thirty-inch aisle space separation is required between rows of containers. A row of containers must be no more than two wide and allow for unobstructed inspection of each container.

(d) Inspections. The generator must conduct "weekly inspections," as defined in WAC 173-303-040, of each central accumulation area looking for leaking containers and for deterioration of containers and the containment system caused by corrosion, deterioration, or other factors. The generator must keep a written or electronic inspection log including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection. See subsection (5)(a) of this section for remedial action required if deterioration or leaks are detected.

(e) Secondary containment. For container accumulation the department requires that the central accumulation area(s) must include secondary containment in accordance with WAC 173-303-630(7).

(f) Special requirements for ignitable or reactive waste.

(i) Containers holding reactive waste exhibiting a characteristic specified in WAC 173-303-090 (7)(a)(vi), (vii) or (viii) must be stored in a manner equivalent to the separation distance for storage of explosives in the International Fire Code, 2015 edition, or the version adopted by the local fire district.

(ii) The generator must design, operate, and maintain ignitable waste and reactive waste (other than a reactive waste which must meet (f)(i) of this subsection) container storage in a manner equivalent with the International Fire Code. Where no specific standard or requirements are specified in the International Fire Code, or in existing state or local fire codes, applicable sections of NFPA 30 "Flammable and Combustible Liquids Code," must be used. The generator must also comply with the requirements of WAC 173-303-395 (1)(d).

(iii) The generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to, the following: Frictional heat, sparks (static, electrical, or mechanical), and radiant heat. While ignitable or reactive waste is being handled, the generator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(g) Special requirements for incompatible wastes.

(i) Incompatible waste, or incompatible wastes and materials must not be placed in the same container, unless WAC 173-303-395 (1)(b) is complied with.

(ii) Dangerous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(iii) A storage container holding a dangerous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. Containment systems for incompatible wastes must be separate.

(h) Closure.

(i) At closure, all dangerous waste and dangerous waste residues must be removed from the containment system. Remaining containers, liners, base, and soil containing or contaminated with dangerous waste or dangerous waste residues must be decontaminated or removed.

(ii) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

(i) Air emission standards. The generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts AA, BB, and CC incorporated by reference in WAC 173-303-400 (3)(a).

(4) Accumulation of dangerous waste in tanks. The generator must comply with:

(a) Applicable air emission standards of 40 C.F.R. Part 265, Subparts AA, BB, and CC incorporated by reference in WAC 173-303-400 (3)(a); and

(b) Tank standards of WAC 173-303-640 (2) through (10), except WAC 173-303-640 (8)(c) and the second sentence of WAC 173-303-640 (8)(a). (Note: A generator, unless otherwise required to do so, does not have to prepare a closure plan, a cost estimate for closure, or provide financial responsibility of their tank system to satisfy the requirement of this section.) Such a generator is exempt from the requirements of WAC 173-303-620 and 173-303-610, except for WAC 173-303-610 (2) and (5).

(5) Accumulation of dangerous waste on drip pads. If the waste is placed on drip pads, the generator must comply with the following:

(a) WAC 173-303-675; and

(b) Remove all wastes from the drip pad and associated collection systems at least once every ninety days; and

(c) Waste removed from drip pads and associated collection systems must be sent immediately to:

(i) An off-site designated facility; or

(ii) An on-site permitted facility; or

(iii) To an on-site central accumulation area where the waste is managed in compliance with the on-site central accumulation area regulations in this section for the remainder of the ninety-day accumulation time limit for large quantity generators. (Example: A generator removes waste from the drip pad at fifty days, and the generator is then allowed to further accumulate that waste in its central accumulation area for up to an additional forty days.);

(d) Maintain the following records on site and readily available for inspection:

(i) The original start date waste was first placed on, or began to accumulate on, the drip pad;

(ii) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection systems at least once every ninety days; and

(iii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(6) Accumulation of waste in containment buildings. If the waste is placed in containment buildings, the generator must comply with the following:

(a) 40 C.F.R. Part 265, Subpart DD, which is incorporated by reference; and

(b) Labeling.

(i) The generator must label its containment building with the words "Dangerous Waste" or "Hazardous Waste" in a conspicuous place easily visible and legible to employees, visitors, emergency responders, waste handlers, or other persons on site. The label must be visible and legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(ii) The generator must also, in a conspicuous place easily visible and legible to employees, visitors, emergency responders, waste handlers, or other persons on site, provide its containment building with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous waste). The indication must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents.

(c) The generator must also maintain the following records at the facility:

(i) The independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record no later than sixty days after the date of initial operation of the unit. Where Subpart G and H are referenced in 40 C.F.R. 265.1102, replace them with WAC 173-303-610 and 173-303-620. After February 18, 1993, PE certification will be required prior to operation of the unit.

(ii) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(iii) Documentation that the unit is emptied at least once every ninety days.

(iv) Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(7) Labeling and marking of containers and tanks.

(a) A generator must clearly mark or label its containers as follows:

(i) With the date upon which each period of accumulation begins is marked and clearly visible for inspection on each container.

(ii) With the words "Dangerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(iii) With an indication of the hazards of the contents (examples include, but are not limited to, applicable dangerous waste characteristic(s) or criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(A) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for the public, emergency response personnel, and employees.

(b) Generators accumulating dangerous waste in tanks must do the following:

(i) Clearly mark or label its tanks with the words "Dangerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of fifty feet. For underground tank systems, the marking or labels must either be placed on aboveground postings at each underground tank system or at each entrance to the active portion (area where the underground tank/tank system is located).

(ii) Clearly mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). For underground tank systems, the hazardous marking or labels must either be placed on aboveground postings at each underground tank system or at each entrance to the active portion (area where the underground tank/tank system is located). The label or marking must be:

(A) Legible and/or recognizable from a distance of at least fifty feet.

(B) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the tanks for the public, emergency response personnel, and employees.

(iii) Use inventory logs, monitoring equipment, or other records to demonstrate that dangerous waste has been emptied within ninety days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of dangerous waste entering the tank daily exit the tank within ninety days of first entering.

(iv) Keep inventory logs or records with the above information on site and readily available for inspection.

(c) The department may also require that a sign be posted at each entrance to the accumulation area, bearing the legend, "danger - unauthorized personnel keep out," or an equivalent legend, written in English, and legible from a distance twenty-five feet or more.

(8) Emergency procedures. The generator complies with the standards of WAC 173-303-201.

(9) Personnel training.

(a) Training program. The generator must provide a program of classroom instruction or on-the-job training for facility personnel. This program must teach personnel to perform their duties in a way that ensures the facility's compliance with this chapter, must teach facility personnel dangerous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed, must ensure that facility personnel are able to respond effectively to emergencies, and must include those elements set forth in the training plan required in (b) of this subsection. In addition:

(i) The training program must be directed by a person knowledgeable in dangerous waste management procedures, and must include training relevant to the positions in which the facility personnel are employed;

(ii) Facility personnel must participate in an annual review of the training provided in the training program;

(iii) This program must be successfully completed by the facility personnel:

(A) Within six months after these regulations become effective; or

(B) Within six months after their employment at or assignment to the facility, or to a new position at the facility, whichever is later.

(iv) Employees hired after the effective date of these regulations must be supervised until they complete the training program; and

(v) At a minimum, the training program must familiarize facility personnel with emergency equipment and systems, and emergency procedures. The program must include other parameters as set forth by the department, but at a minimum must include, where applicable:

(A) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(B) Key parameters for automatic waste feed cut-off systems;

(C) Communications or alarm systems;

(D) Response to fires or explosions;

(E) Response to ground-water contamination incidents;

and

(F) Shutdown of operations.

(b) Written training plan. The generator must develop a written training plan which must be kept at the facility and which must include the following documents and records:

(i) For each position related to dangerous waste management at the facility, the job title, the job description, and the name of the employee filling each job. The job description must include the requisite skills, education, other qualifications, and duties for each position;

(ii) A written description of the type and amount of both introductory and continuing training required for each position; and

(iii) Records documenting that facility personnel have received and completed the training required by this section. The department may require, on a case-by-case basis, that training records include employee initials or signature to verify that training was received.

(c) Training records. Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(10) General inspections.

(a) The generator must inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of dangerous waste constituents to the environment, or a threat to human health. The generator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b) The generator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that help prevent, detect, or respond to hazards to the public health or the environment. In addition:

(i) The schedule must be kept at the facility;

(ii) The schedule must identify the types of problems which are to be looked for during inspections;

(iii) The generator must keep a written or electronic inspection log or summary, including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made, an account of spills or discharges in accordance with WAC 173-303-145, and the date and nature of any repairs or remedial actions taken. The log or summary must be kept at the facility for at least five years from the date of inspection.

(c) The generator must remedy any problems revealed by the inspection, on a schedule which prevents hazards to the public health and environment. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(11) Land disposal restrictions. The generator complies with all applicable requirements under 40 C.F.R. 268.

(12) Closure. A generator accumulating dangerous waste in containers, tanks, drip pads and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, must meet the following conditions:

(a) Notification for closure of a waste accumulation unit. The generator must perform one of the following when closing a waste accumulation unit:

(i) Place a notice in the operating record within thirty days after closure identifying the location of the unit within the facility; or

(ii) Meet the closure performance standards of (c) of this subsection for container, tank, and containment building waste accumulation units or (d) of this subsection for drip pads and notify the department following the procedures of (b)(ii) of this subsection for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(b) Notification of closure of the facility.

(i) Notify the department using the Washington State Dangerous Waste Site Identification Form no later than thirty days prior to closing the facility.

(ii) Notify the department using the Washington State Dangerous Waste Site Identification Form within ninety days after closing the facility that it has complied with the closure performance standards of (c) or (d) of this subsection, respectively. If the facility cannot meet the closure performance standards of (c) or (d) of this subsection, notify the department using the Washington State Dangerous Waste Site Identification Form that it will close as a landfill under WAC 173-303-665 in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using the Washington State Dangerous Waste Site Identification Form that it will close under the drip pad standards of WAC 173-303-675.

(iii) A generator may request additional time to clean at closure (i.e., to meet the closure performance standards of (c)

or (d) of this subsection, respectively), but it must notify the department using the Washington State Dangerous Waste Site Identification Form within seventy-five days after the date provided in (b)(i) of this subsection to request an extension and provide an explanation as to why the additional time is required.

(c) Closure performance standard for container, tank systems and containment building waste accumulation units. At closure the generator must close the accumulation unit or facility in a manner that:

(i)(A) Minimizes the need for further maintenance;

(B) Controls, minimizes or eliminates to the extent necessary to protect human health and the environment, post-closure escape of dangerous waste, dangerous waste constituents, leachate, contaminated runoff, or dangerous waste decomposition products to the ground, surface water, groundwater, or the atmosphere; and

(C) Returns the land to the appearance and use of surrounding land areas to the degree possible given the nature of the previous dangerous waste activity.

(ii) Remove or decontaminate all contaminated equipment, bases, structures and soil and any remaining dangerous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment. Such removal or decontamination must assure that the levels of dangerous waste or dangerous waste constituents or residues do not exceed:

(A) For soils, groundwater, surface water, and air, the numeric cleanup levels calculated using unrestricted use exposure assumptions according to the Model Toxics Control Act regulations, chapter 173-340 WAC as of the effective date or hereafter amended. Primarily, these will be numeric cleanup levels calculated according to MTCA Method B, although MTCA Method A may be used as appropriate, see WAC 173-340-700 through 173-340-760, excluding WAC 173-340-745; and

(B) For all structures, equipment, bases, liners, etc., clean closure standards will be set by the department on a case-by-case basis in accordance with the closure performance standards of (c) of this subsection and in a manner that minimizes or eliminates post-closure escape of dangerous waste constituents.

(iii) Any dangerous waste and all contaminated equipment, structures and soils generated in the process of closing either the generator's facility or unit(s) accumulating dangerous waste must be managed in accordance with all applicable standards of this chapter, including removing any dangerous waste contained in these units within ninety days of generating it and managing these wastes in a permitted designated facility.

(iv) If the generator demonstrates that any contaminated soils, equipment, structures, and wastes cannot be practicably removed or decontaminated as required in (c)(ii) of this subsection, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (WAC 173-303-665). In addition, for the purposes of closure, post-closure, and financial responsibility, such a

waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in WAC 173-303-665.

(d) Closure performance standards for drip pad waste accumulation units. At closure, the generator must comply with the closure requirements of (b), (c)(i) and (iii) of this subsection, and WAC 173-303-675.

(e) The closure requirements of this subsection do not apply to satellite accumulation areas.

(13) Accumulation of F006.

(a) A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, may accumulate F006 waste on site for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:

(i) The generator has implemented pollution prevention practices that reduce the amount of any dangerous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(ii) The F006 waste is legitimately recycled through metals recovery;

(iii) No more than 44,000 pounds of F006 waste is accumulated on site at any one time; and

(iv) The F006 waste is managed in accordance with the following:

(A) The F006 waste is placed:

(I) In containers and the generator complies with the applicable requirements of WAC 173-303-200(3), 173-303-690 through 173-303-692; and/or

(II) In tanks and the generator complies with the applicable requirements of WAC 173-303-690 through 173-303-692 and 173-303-200(4); and/or

(III) In containment buildings and the generator complies with Subpart DD of 40 C.F.R. Part 265 which is incorporated by reference at WAC 173-303-400(3), and has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

• A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the generator is complying with the procedures; or

• Documentation that the unit is emptied at least once every one hundred eighty days.

(B) In addition, such a generator is exempt from all the requirements in Subparts G and H of 40 C.F.R. Part 265, except for 265.111 and 265.114 which are incorporated by reference in WAC 173-303-400(3).

(C) Labeling and marking of containers and tanks. While being accumulated on site, each container and tank is clearly labeled or marked with:

(I) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(II) While being accumulated on site, each container and tank is labeled or marked clearly with the words "Dangerous Waste" or "Hazardous Waste." For containers the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height. For tanks the label or markings is legible from fifty feet. For underground tank systems, the label or markings, must either be placed on aboveground postings at each underground tank system or at each entrance to the active portion (area where the underground tank/tank system is located); and

(III) With an indication of the hazards of the contents (examples include, but are not limited to, applicable dangerous waste characteristic(s) or criteria of ignitable, corrosive, reactive and toxic). The label or marking must be:

• For containers, legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

• For tanks, legible and/or recognizable from fifty feet.

• A descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers or tanks for the public, emergency response personnel, and employees.

(D) The generator complies with the requirements for owners or operators in WAC 173-303-200(9), 173-303-201 and with 40 C.F.R. 268.7 (a)(5) which is incorporated by reference in WAC 173-303-140 (2)(a).

(b) F006 transportation over two hundred miles. A generator who generates 2,200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more for off-site metals recovery, may accumulate F006 waste on site for more than ninety days, but not more than two hundred seventy days without a permit or without having interim status if the generator complies with the requirements of (a)(i) through (iv) of this subsection.

(c) F006 accumulation time extension. A generator accumulating F006 in accordance with (a) and (b) of this subsection who accumulates F006 waste on site for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than 44,000 pounds of F006 waste on site is an operator of a storage facility and is subject to the facility and permit requirements of this chapter unless the generator has been granted an extension to the one hundred eighty-day (or two hundred seventy-day, if applicable) period or an exception to the 44,000 pound accumulation limit. Such extensions and exceptions may be granted by the department if F006 waste must remain on site for longer than one hundred eighty days (or two hundred seventy days, if applicable) or if more than 44,000 pounds of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the department on a case-by-case basis.

(14) Rejected load. A generator who sends a shipment of dangerous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of WAC 173-303-370(5) may accumulate the returned waste on site in accordance with subsections (1) through (12) of this section. Upon receipt of the returned shipment, the generator must:

(a) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(b) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(15) Consolidation of dangerous waste received from small quantity generators. Large quantity generators may accumulate on-site dangerous waste received from small quantity generators under the control of the same person (as defined in WAC 173-303-040), without a storage permit or interim status and without complying with the final facility standards of WAC 173-303-600, provided that they comply with the following conditions:

(a) Definitions. The definition of "control" as it applies to this section is found in WAC 173-303-040.

(b)(i) The large quantity generator must notify the department using Washington State Dangerous Waste Identification Form according to the instructions on the form at least thirty days prior to receiving the first shipment from a small quantity generator(s); and

(ii) Identifies on the form the name(s) and site address(es) for the small quantity generator(s) as well as the name and business telephone number for a contact person for the small quantity generator(s); and

(iii) Submits an updated Washington State Dangerous Waste Identification Form according to the instructions on the form within thirty days after a change in the name or site address for the small quantity generator.

(c) The large quantity generator maintains records of shipments for five years from the date the dangerous waste was received from the small quantity generator. These records must identify the name, site address, and contact information for the small quantity generator and include a description of the dangerous waste received, including the quantity and the date the waste was received.

(d) The large quantity generator complies with the independent requirements identified in WAC 173-303-170 (2)(a)(iii) and the conditions for exemption in this section.

(e) For the purpose of complying with the labeling and marking regulations in subsection (7) of this section, the large quantity generator must label the container or unit with the date accumulation started (i.e., the date the dangerous waste was received from the small quantity generator). If the large quantity generator consolidates incoming dangerous waste from a small quantity generator with either its own dangerous waste or with dangerous waste from other small quantity generators, the large quantity generator must label each container or unit with the earliest date any dangerous waste in the container was accumulated on site.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-201 (~~Special accumulation standards~~) Preparedness, prevention, emergency procedures and contingency plans for large quantity generators. ((1) This section applies to persons who generate more than 220 pounds but less than 2200 pounds per calendar month and do not accumulate on-site more than 2200 pounds of dangerous waste. The special provisions of this section do not apply to acutely hazardous wastes or Toxic EHW (WT01) that exceed the QEL that are being generated or accumulated by the generator.

(2) For purposes of accumulating dangerous waste on-site, persons who generate no more than 2200 pounds per month or who accumulate on-site no more than 2200 pounds of dangerous waste at any one time are subject to all applicable provisions of WAC 173-303-200 except as follows:

(a) In lieu of the ninety-day accumulation period, dangerous wastes may be accumulated for one hundred eighty days or less. The department may, on a case-by-case basis, grant a maximum ninety-day extension to this one hundred eighty-day period if the generator must transport his waste, or offer his waste for transportation, over a distance of two hundred miles or more for offsite treatment, storage, or disposal, and the dangerous wastes must remain on-site due to unforeseen, temporary and uncontrollable circumstances;

(b) The generator need not comply with WAC 173-303-330 (Personnel training);

(c) In lieu of the contingency plan and emergency procedures required by WAC 173-303-350 and 173-303-360, the generator must comply with the following:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in (c)(iv) of this subsection. This employee is the emergency coordinator.

(ii) The generator must post the following information next to all emergency communication devices (including telephones, two-way radios, etc.):

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of dangerous waste to the extent possible, and as soon as is practicable, clean up the dangerous waste and any contaminated materials or soil;

~~(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached waters of the state, the generator must immediately notify the department and either the government official designated as the on-scene coordinator, or the National Response Center (using their twenty-four hour toll free number 800/424-8802). The report must include the following information:~~

~~(I) The name, address, and EPA/state identification number of the generator;~~

~~(II) Date, time, and type of incident (e.g., spill or fire);~~

~~(III) Quantity and type of hazardous waste involved in the incident;~~

~~(IV) Extent of injuries, if any; and~~

~~(V) Estimated quantity and disposition of recovered materials, if any;~~

~~(d) For waste that is placed in tanks, generators must comply with WAC 173-303-202 in lieu of WAC 173-303-200 (1)(b);~~

~~(e) The generator does not need to comply with 40 C.F.R. Part 265.176 and 40 C.F.R. Subparts AA, BB, and CC, which have been incorporated by reference at WAC 173-303-400 (3)(a-). (1) Applicability. The regulations of this section apply to those areas of a large quantity generator's facility where dangerous waste is generated or accumulated on site.~~

(2) A large quantity generator facility must be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or nonsudden release of dangerous waste, hazardous substance or dangerous waste constituents to air, soil, or surface or groundwater which could threaten the public health or the environment. This section describes preparations and preventive measures which help avoid or mitigate such situations.

(3) Required equipment. All areas deemed applicable by subsection (1) of this section must be equipped with the following, unless it can be demonstrated to the department that none of the hazards posed by waste or hazardous substance handled at the facility could require a particular kind of equipment specified below. A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held, two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as those using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems.

(4) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment,

spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(5) Access to communications or alarms. Personnel must have immediate access to the signaling devices described in the situations below:

(a) Whenever dangerous waste is being poured, mixed, spread, or otherwise handled, all personnel involved must have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subsection (3) of this section;

(b) If there is ever just one employee on the premises while the facility is operating, they must have immediate access (e.g., direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held, two-way radio, capable of summoning external emergency assistance, unless such a device is not required in subsection (3) of this section.

(6) Aisle space. The generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the department that aisle space is not needed for any of these purposes.

(7) Arrangements with local authorities. The large quantity generator must attempt to make the following arrangements, as appropriate for the type of waste handled at its facility and the potential need for the services of these organizations, unless the hazards posed by wastes handled at the facility would not require these arrangements:

(a) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of dangerous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

(b) Arrangements to familiarize local hospitals with the properties of dangerous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility;

(c) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers;

(d) Where more than one party might respond to an emergency, agreements designating primary emergency authority and agreements with any others to provide support to the primary emergency authority; and

(e) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(8) Contingency plan purpose and implementation.

(a) The large quantity generator must have a contingency plan for the facility. The purpose of a contingency plan and emergency procedures is to lessen the potential impact on the public health and the environment due to any emergency event such as, but not limited to, a fire, natural disaster, explosion, or any unplanned sudden or nonsudden release of dangerous waste, hazardous substance or dangerous waste constituents to air, soil, surface water, or groundwater.

(b) A contingency plan must be developed to lessen the potential impacts of such emergency events, and the plan must be implemented immediately when such emergency events occur.

(9) Contents of a contingency plan.

(a) Each large quantity generator must have a contingency plan at their facility for use in emergencies or any sudden or nonsudden releases which threaten human health and the environment. If the generator has already prepared a spill prevention control and countermeasures (SPCC) plan in accordance with 40 C.F.R. Part 112, or some other emergency or contingency plan, they need only amend that plan to incorporate dangerous waste management provisions that are sufficient to comply with the requirements of this section. The large quantity generator may develop one contingency plan that meets all regulatory requirements. Ecology recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to nondangerous waste (non-Hazardous Waste Management Act or nondangerous waste regulation) provisions in an integrated contingency plan, the changes do not trigger the need for a dangerous waste permit modification.

(b) The contingency plan must contain the following:

(i) A description of the actions which facility personnel must take to comply with this section and WAC 173-303-145;

(ii) A description of the actions which will be taken in the event that a dangerous waste shipment, which is damaged or otherwise presents a hazard to the public health and the environment, arrives at the facility, and is not acceptable to the large quantity generator, but cannot be transported, pursuant to the requirements of WAC 173-303-370(6), manifest system, reasons for not accepting dangerous waste shipments;

(iii) A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services as required in subsection (7) of this section;

(iv) A current list of names and emergency telephone numbers of all persons qualified to act as the emergency coordinator required in this section and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates. In situations where the large quantity generator facility has an emergency coordinator continuously on duty because it operates twenty-four hours per day, every day of the year, the plan may list the staffed position (e.g., operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times;

(v) A list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems, and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

(vi) An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe the signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of materials or fires).

(10) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the large quantity generator's facility; and

(b) Submitted by the large quantity generator to all local emergency responders (i.e., police departments, fire departments, hospitals, and state and local emergency response teams) that may be called upon to provide emergency services.

(11) Quick reference guide.

(a) A large quantity generator who first becomes subject to these provisions and any current large quantity generator who is amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified in subsection (10) of this section.

(b) Contents of the quick reference guide. This quick reference guide must include the following elements:

(i) The types and names of dangerous waste in layman's terms and the associated hazards associated with each dangerous waste present at any one time (e.g., toxic paint waste, spent ignitable solvent, corrosive acid);

(ii) The estimated maximum amount of each dangerous waste that may be present at any one time;

(iii) The identification of any dangerous waste where exposure would require unique or special treatment by medical or hospital staff;

(iv) A map of the facility showing where dangerous waste are generated, accumulated, recycled and treated and routes for accessing these wastes;

(v) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(vi) The locations of water supply (e.g., fire hydrant and its flow rate);

(vii) The identification of on-site notification systems (e.g., a fire alarm that rings off site, smoke alarms); and

(viii) The name of the emergency coordinator(s) and seven days/twenty-four-hours emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators must update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified in this section.

(12) Amendments of a contingency plan. The large quantity generator must review and immediately amend the contingency plan, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator's facility changes (in its design, construction, operation, maintenance, or other circumstances) in

a way that materially increases the potential for fires, explosions, or releases of dangerous waste or dangerous waste constituents, or in a way that changes the response necessary in an emergency:

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

(13) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, required by subsection (9) of this section, all operations and activities at the facility, the location and properties of all wastes handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan and to implement the necessary emergency procedures outlined in subsection (14) of this section.

(14) Emergency procedures. The following procedures must be implemented in the event of an emergency:

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or designee when the emergency coordinator is on call) must immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health and the environment (considering direct, indirect, immediate, and long-term effects) that may result from the release, fire, or explosion.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment, they must report their findings as follows:

(i) If their assessment indicates that evacuation of local areas may be advisable, they must immediately notify appropriate local authorities. They must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) They must immediately notify the department and either the government official designated as the on-scene coordinator, or the National Response Center (using their twenty-four-hour toll free number 1-800-424-8802).

(e) Their assessment report must include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health or the environment outside the facility.

(f) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other dangerous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(g) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(h) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(i) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(i) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(j) The large quantity generator must notify the department, and appropriate local authorities, that the facility is in compliance with subsection (i) of this section before operations are resumed in the affected area(s) of the facility.

(k) The large quantity generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, they must submit a written report on the incident to the department. The report must include:

(i) Name, address, and telephone number of the owner or operator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident (e.g., fire, explosion);

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(vii) Estimated quantity and disposition of recovered material that resulted from the incident;

(viii) Cause of incident; and

(ix) Description of corrective action taken to prevent reoccurrence of the incident.

AMENDATORY SECTION (Amending WSR 94-01-060, filed 12/8/93, effective 1/8/94)

**WAC 173-303-202 ((Special requirements for generators of between two hundred twenty and two thousand two hundred pounds per month that accumulate dangerous waste in tanks.)) Reserved. (((1) This section applies to generators of more than two hundred twenty pounds but less than two thousand two hundred pounds of dangerous waste in a calendar month, that accumulate dangerous waste in tanks for less than one hundred eighty days (or two hundred sev-**

enty days if the generator must ship the waste greater than two hundred miles), and do not accumulate over two thousand two hundred pounds on-site at any time.

(2) Generators of between two hundred twenty and two thousand two hundred pounds per month of dangerous waste must comply with the following general operating requirements:

(a) Treatment or storage of dangerous waste in tanks must comply with WAC 173-303-395(1).

(b) Dangerous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Uncovered tanks must be operated to ensure at least sixty centimeters (two feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top sixty centimeters (two feet) of the tank.

(d) Where dangerous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a standby tank).

Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).

(3) Generators of between two hundred twenty and two thousand two hundred pounds per month accumulating dangerous waste in tanks must inspect, where present:

(a) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(b) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(c) The level of waste in the tank at least once each operating day to ensure compliance with subsection (2)(c) of this section;

(d) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(e) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes,) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

Note: As required by WAC 173-303-320(3), the owner or operator must remedy any deterioration or malfunction he finds.

(4) Generators of between two hundred twenty and two thousand two hundred pounds per month accumulating dangerous waste in tanks must, upon closure of the facility, remove all dangerous waste from tanks, discharge control equipment, and discharge confinement structures.

Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with WAC 173-303-070 (2)(a) or (b), that any solid waste removed from his tank is not a dangerous waste, the owner or operator becomes a generator of dangerous waste and must manage it in accordance with all applicable requirements of this chapter.

(5) Generators of between two hundred twenty and two thousand two hundred pounds per month must comply with the following special requirements for ignitable or reactive waste:

(a) Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that:

(A) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090 (5) or (7) of this chapter; and

(B) WAC 173-303-395(1) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981).

(6) Generators of between two hundred twenty and two thousand two hundred pounds per month must comply with the following special requirements for incompatible wastes:

(a) Incompatible wastes, or incompatible wastes and materials, (see 40 C.F.R. Part 265 Appendix V for examples) must not be placed in the same tank, unless WAC 173-303-395(1) is complied with.

(b) Dangerous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless WAC 173-303-395(1) is complied with.)

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

**WAC 173-303-210 Generator recordkeeping.** (1) The generator must keep a copy of each manifest signed by the initial transporter in accordance with WAC 173-303-180(3), manifest procedures, for three years, or until ((he)) they receive((s)) a signed copy from the designated facility which received the waste. The signed facility copy must be retained for at least five years from the date the waste was accepted by the initial transporter.

(2) The generator must keep a copy of each annual report and exception report as required by WAC 173-303-220 for a period of at least five years from the due date of each report. The generator must keep a copy of ((his)) their most recent Dangerous Waste Site Identification Form until ((he is)) they are no longer defined as a generator under this chapter.

(3) Waste designation records.

(a) The generator must keep records of any test results, waste analyses, or other determinations made in accordance with WAC 173-303-170(((+))) for designating dangerous waste, including records that identify whether a solid waste is a dangerous waste, for at least five years from the date that the waste was last transferred for on-site or off-site treatment, storage, or disposal.

(b) At a minimum, test results must include:

- (i) The sample source, sampling date, and sampling procedure used;
- (ii) The laboratory performing the test;
- (iii) The testing date, and testing method used;
- (iv) The analytical result, or the quantitative range of the testing method for analytes not detected.

(c) For knowledge base designations, records must explain the knowledge basis for the generator's designation.

(4) Any other records required for generators accumulating wastes on-site as described in WAC 173-303-172 or 173-303-200 (~~or 173-303-201~~) must be retained for at least five years(~~;~~) including, but not limited to, such items as inspection logs.

(5) The periods of retention for any records described in this section will be automatically extended during the course of any unresolved enforcement action requiring those records or upon request by the director.

(6) All generator records, including plans required by this chapter, will be made available and furnished upon request by the director.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-220 Generator reporting.** The generator must submit the following reports to the department by the specified due date for each report, or within the time period allowed for each report.

(1) Annual reports.

(a) A generator or any person who has obtained an EPA/state identification number pursuant to WAC 173-303-060 must submit an annual report to the department if the number has been active any time during the reporting year, on the Dangerous Waste Annual Report according to the instructions on the form (copies are available from the department), no later than March 1 for the preceding calendar year.

(b) ~~(In addition,)~~ Any generator who is a large quantity generator or a medium quantity generator for at least one month of the calendar year who ships any dangerous waste off site to a treatment, storage, disposal or recycling facility must comply with the annual reporting requirements of WAC 173-303-060 covering those wastes and generator activities for that reporting year.

(c) Any generator who is a large quantity generator or a medium quantity generator for at least one month of the calendar year who stores, treats, recycles or disposes of dangerous waste on-site must comply with the annual reporting requirements of WAC 173-303-390(~~;~~) Facility reporting, covering those wastes and activities for that reporting year.

(d) Any large quantity generator that receives dangerous waste from small quantity generators pursuant to WAC 173-303-200(15) must comply with the annual reporting requirements of WAC 173-303-390 Facility reporting.

(e) Reporting for exports of hazardous waste is required on the annual report form. In addition, a separate annual report requirement is set forth at 40 C.F.R. (~~(262.56)~~) 262.83(g), which is incorporated by reference at WAC 173-303-230(1).

(2) Exception reports.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five days of the date the waste was accepted by the initial transporter must contact the transporter(s) and/or facility to determine the status of the dangerous waste shipment.

(b) A generator must submit an exception report to the department if ~~((he has))~~ they have not received a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within forty-five days of the date the waste was accepted by the initial transporter.

(c) The exception report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) A cover letter signed by the generator or ~~((his))~~ their representative explaining the efforts taken to locate the waste and the results of those efforts.

(d) The department may require a generator to submit exception reports in less than forty-five days if it finds that the generator frequently or persistently endangers public health or the environment through improper waste shipment practices.

(e) For rejected shipments of dangerous waste or container residues contained in nonempty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of WAC 173-303-370 (5)(e)), the generator must comply with the requirements of (a) through (d) of this subsection, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of (a) through (d) of this subsection for a shipment forwarding such waste to an alternate facility by a designated facility:

(i) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility; and

(ii) The thirty-five to forty-five day time frames begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

Note: The submission to the department need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(3) Additional reports. The director, as ~~((he))~~ they deem(~~(s))~~ necessary under chapter 70.105 RCW, may require a generator to furnish additional reports (including engineering reports, plans, and specifications) concerning the quantities and disposition of the generator's dangerous waste.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-230 Special conditions.** (1) Exporting dangerous waste.

Federal export requirements, administered by EPA, are set forth at 40 C.F.R. 262 (~~(Subparts E and))~~ Subpart H and 40 C.F.R. 261.6 (a)(3)(i)(A) and (B), and specify the procedures applicable to generators and transporters of hazardous

waste (as defined in WAC 173-303-040). These requirements are incorporated by reference. Copies of any forms or reports submitted to the administrator of United States EPA as required by 40 C.F.R. 262 Subpart ((E)) H must also be submitted to the department.

(2) Importing dangerous waste. When importing dangerous waste from a foreign country into Washington state, the United States importer must comply with all the requirements of this chapter for generators, including the requirements of WAC 173-303-180, except that:

(a) In place of the generator's name, address and EPA/state identification number, the name and address of the foreign generator and the importer's name, address and EPA/state identification number must be used; and

(b) In place of the generator's signature on the certification statement, the United States importer or ((his)) their agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports dangerous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (for example, states, waste handlers, and/or commercial forms printers).

(d) In the international shipments block, the importer must check the import box and enter the point of entry (city and state) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with WAC 173-303-370(3).

(3) Empty containers. For the purposes of this chapter, a person who stores, treats, disposes, transports, or offers for transport empty containers of dangerous waste that were for ((his)) their own use will not be treated as a generator or as a facility owner/operator if the containers are empty as defined in WAC 173-303-160(2), and either:

(a) The rinsate is not a dangerous waste under this chapter; or

(b) ((He)) They reuse((s)) the rinsate in a manner consistent with the original product or, if ((he is)) they are a farmer and the rinsate contains pesticide residues, ((he)) they reuse((s)) or manage((s)) the rinsate in a manner consistent with the instructions on the pesticide label, provided that when the label instructions specify disposal or burial, such disposal or burial must be on the farmer's own (including rented, leased or tenanted) property.

(4) Tank cars. A person rinsing out dangerous waste tote tanks, truck or railroad tank cars must handle the rinsate according to this chapter, and according to chapter 90.48 RCW, Water pollution control.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-235 Alternative requirements for eligible academic laboratories.** (1) The following definitions apply to this section:

(a) (~~"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.~~

~~(b) "Central accumulation area" means an on-site dangerous waste accumulation area subject to either WAC 173-303-200 (large quantity generators) or 173-303-201 (persons who generate more than two hundred twenty pounds but less than two thousand two hundred pounds per calendar month of dangerous waste). A central accumulation area at an eligible academic entity that chooses to be subject to this section must also comply with subsection (12) of this section when accumulating unwanted material and/or dangerous waste.~~

~~(e))~~ "College/university" means a private or public, postsecondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

~~((d))~~ (b) "Eligible academic entity" means a college or university, or a nonprofit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

~~((e))~~ (c) "Formal written affiliation agreement" for a nonprofit research institute means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

~~((f))~~ (d) "Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a nonproduction basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

~~((g))~~ (e) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by subsection (9) of this section does not qualify as a laboratory clean-out.

~~((h))~~ (f) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, postdoctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for ((his/her)) their work in the laboratory to be considered a laboratory worker. Under-

graduate and graduate students in a supervised classroom setting are not laboratory workers.

((+)) (g) "Nonprofit research institute" means an organization that conducts research as its primary function and files as a nonprofit organization under the tax code of 26 U.S.C. 501(c)(3).

((+)) (h) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in WAC 173-303-9903 for reactivity.

((+)) (i) "Teaching hospital" means a hospital that trains students to become physicians, nurses, or other health or laboratory personnel.

((+)) (j) "Trained professional" means a person who has completed the applicable dangerous waste training requirements of WAC 173-303-200 (1)(e)(i) for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with WAC ((173-303-201(2)(e))) 173-303-172 (12)(c) for generators regulated under WAC ((173-303-201)) 173-303-172 and small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

((+)) (k) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for dangerous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to WAC 173-303-016, or a dangerous waste pursuant to WAC 173-303-070((2)). If an eligible academic entity elects to use another equally effective term in lieu of unwanted material, as allowed by subsection (7)(a)(i)(A) of this section, the equally effective term has the same meaning and is subject to the same requirements as unwanted material under this section.

((+)) (l) "Working container" means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

(2) Purpose and applicability.

(a) Large quantity generators and medium quantity generators ((regulated under WAC 173-303-201)). This section provides alternative requirements to the requirements in WAC 173-303-070(3) and ((173-303-200(2))) 173-303-174 for the dangerous waste determination and accumulation of dangerous waste in laboratories owned by eligible academic entities that choose to be subject to this section, provided that they complete the notification requirements in subsection (4) of this section.

(b) Small quantity generators. This section provides alternative requirements to the conditional exemption in WAC ((173-303-070(8)(b))) 173-303-171 for the accumulation of dangerous waste in laboratories owned by eligible academic entities that choose to be subject to this section, provided that they complete the notification requirements of subsection (4) of this section.

(3) This section is optional.

(a) Large quantity generators and medium quantity generators ((regulated under WAC 173-303-201)): Eligible academic entities have the option of complying with this section with respect to its laboratories, as an alternative to complying with the requirements of WAC 173-303-070(3) and ((173-303-200(2))) 173-303-174.

(b) Small quantity generators: Eligible academic entities have the option of complying with this section with respect to its laboratories, as an alternative to complying with the conditional exemption of WAC ((173-303-070(8)(b))) 173-303-171.

(4) How an eligible academic entity indicates it will be subject to the requirements of this section.

(a) An eligible academic entity must notify the department in writing, using the Washington State Dangerous Waste Site Identification form, that it is electing to be subject to the requirements of this section for all the laboratories owned by the eligible academic entity under the same EPA/state identification number. An eligible academic entity that is a small quantity generator must notify that it is electing to be subject to the requirements of this section for all the laboratories owned by the eligible academic entities that are on-site. An eligible academic entity must submit a separate notification (Washington State Dangerous Waste Site Identification form) for each EPA/state identification number that is electing to be subject to the requirements of this section, and must submit the Washington State Dangerous Waste Site Identification form before it begins operating under this section.

(b) When submitting the Washington State Dangerous Waste Site Identification form, the eligible academic entity must completely fill out the form according to the form instructions including, but not limited to, the following fields:

- (i) Reason for submittal;
- (ii) Site EPA/state identification number;
- (iii) Site name;
- (iv) Site location information;
- (v) Site land type;
- (vi) North American Industry Classification System (NAICS) code(s) for the site;
- (vii) Site mailing address;
- (viii) Site contact person;
- (ix) Operator and legal owner of the site;
- (x) Type of regulated waste activity;
- (xi) Certification.

(c) An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to this section.

(d) A teaching hospital that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to this section.

(e) A nonprofit research institute that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the nonprofit research institute for as long as its laboratories are subject to this section.

(5) How an eligible academic entity indicates it will withdraw from the requirements of this section.

(a) An eligible academic entity must notify in writing, using the Washington State Dangerous Waste Site Identification form, that it is electing to no longer be subject to the requirements of this section for all the laboratories owned by the eligible academic entity under the same EPA/state identification number and that it will comply with the requirements of WAC 173-303-070(3) and ~~((173-303-200(2)))~~ 173-303-174 for large quantity generators and for medium quantity generators ~~((regulated under WAC 173-303-201))~~. An eligible academic entity that is a small quantity generator must also notify that it is withdrawing from the requirements of this section for all the laboratories owned by the eligible academic entity that are on site under the same EPA/state identification number and that it will comply with the conditional exemption in WAC ~~((173-303-070(8)))~~ 173-303-171. An eligible academic entity must submit a separate notification (Washington State Dangerous Waste Site Identification form) for each EPA/state identification number that is withdrawing from the requirements of this section and must submit the Washington State Dangerous Waste Site Identification form before it begins operating under the requirements of WAC 173-303-070(3) and ~~((173-303-200(2)))~~ 173-303-174 for large quantity generators and for medium quantity generators ~~((regulated under WAC 173-303-201 or 173-303-070(8)))~~ and WAC 173-303-171 for small quantity generators.

(b) When submitting the Washington State Dangerous Waste Site Identification form, the eligible academic entity must completely fill out the form according to the form instructions including, but not limited to, the following fields:

- (i) Reason for submittal;
- (ii) Site EPA/state identification number;
- (iii) Site name;
- (iv) Site location information;
- (v) Site land type;
- (vi) North American Industry Classification System (NAICS) code(s) for the site;
- (vii) Site mailing address;
- (viii) Site contact person;
- (ix) Operator and legal owner of the site;
- (x) Type of regulated waste activity;
- (xi) Certification.

(c) An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

(6) Summary of the requirements of this section. An eligible academic entity that chooses to be subject to this section is not required to have interim status or a final facility Part B permit for the accumulation of unwanted material and dangerous waste in its laboratories, provided the laboratories comply with the provisions of this section and the eligible academic entity has a laboratory management plan (LMP) in accordance with subsection (15) of this section that describes how the laboratories owned by the eligible academic entity will comply with the requirements of this section.

(7) Labeling and management standards for containers of unwanted material in the laboratory. An eligible academic entity must manage containers of unwanted material while in

the laboratory in accordance with the requirements in this section.

(a) Labeling: Label unwanted material as follows:

(i) The following information must be affixed or attached to the container:

(A) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the laboratory management plan;

(B) The date that the unwanted material first began accumulating in the container; and

(C) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(I) The name of the chemical(s);

(II) The type or class of chemical, such as organic solvents or halogenated organic solvents;

(III) The risk(s) associated with the unwanted material.

(ii) The following information may be affixed or attached to the container, but must at a minimum be associated with the container.

This includes information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and dangerous waste and to assign the proper dangerous waste code(s), pursuant to WAC 173-303-070(3). Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or dangerous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction;

(B) Whether the unwanted material has been used or is unused;

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of containers in the laboratory: An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

(i) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired;

(ii) Containers are compatible with their contents to avoid reactions between the contents and the container and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired; and

(iii) Containers must be kept closed at all times, except:

(A) When adding, removing or bulking unwanted material;

(B) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container must either be closed or the contents emptied into a separate container that is then closed; or

(C) When venting of a container is necessary.

(I) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs; or

(II) To prevent dangerous situations, such as build-up of extreme pressure.

(8) Training. An eligible academic entity must provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students must be commensurate with their duties so they understand the requirements in this section and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways including, but not limited to:

(i) Instruction by the professor or laboratory manager before or during an experiment;

(ii) Formal classroom training;

(iii) Electronic/written training;

(iv) On-the-job training; or

(v) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator must maintain documentation for the durations specified in WAC 173-303-330(3) demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(i) Sign-in/attendance sheet(s) for training session(s);

(ii) Syllabus for training session;

(iii) Certificate of training completion; or

(iv) Test results.

(d) A trained professional must:

(i) Accompany the transfer of unwanted material and dangerous waste when the unwanted material and dangerous waste is removed from the laboratory; and

(ii) Make the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material.

(9) Removing containers of unwanted material from the laboratory.

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:

(i) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed six months; or

(ii) Remove containers of unwanted material from each laboratory within six months of each container's accumulation start date.

(b) The eligible academic entity must specify in Part I of its laboratory management plan whether it will comply with (a)(i) or (ii) of this subsection for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity must specify in Part II of its laboratory management plan how it will comply with (a)(i) or (ii) of this subsection and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(i) If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous

unwanted material) in excess of fifty-five gallons before the regularly scheduled removal, the eligible academic entity must ensure that all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

(A) Are marked on the label that is affixed or attached to the container with the date that fifty-five gallons is exceeded; and

(B) Are removed from the laboratory within ten calendar days of the date that fifty-five gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

(ii) If a laboratory accumulates more than one quart (or 2.2 pounds) of reactive acutely hazardous unwanted material before the regularly scheduled removal, the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:

(A) Are marked on the label that is affixed or attached to the container with the date that one quart (or 2.2 pounds) is exceeded; and

(B) Are removed from the laboratory within ten calendar days of the date that one quart (or 2.2 pounds) was exceeded, or at the next regularly scheduled removal, whichever comes first.

(10) Where and when to make the dangerous waste determination and where to send containers of unwanted material upon removal from the laboratory.

(a) Large quantity generators and medium quantity generators (~~regulated under WAC 173-303-201~~) - An eligible academic entity must ensure that a trained professional makes a dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in any of the following areas:

(i) In the laboratory before the unwanted material is removed from the laboratory, in accordance with subsection (11) of this section;

(ii) Within four calendar days of arriving at an on-site central accumulation area, in accordance with subsection (12) of this section; and

(iii) Within four calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with subsection (13) of this section.

(b) Small quantity generators - An eligible academic entity must ensure that a trained professional makes a dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with subsection (11) of this section.

(11) Making the dangerous waste determination in the laboratory before the unwanted material is removed from the laboratory. If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in the laboratory, it must comply with the following:

(a) A trained professional must make the dangerous waste determination, pursuant to WAC 173-303-070(3), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous wastes" on the container label that is affixed or attached to the

container, before the dangerous waste may be removed from the laboratory; and

(ii) Write the appropriate dangerous waste code(s) on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste is transported off-site; and

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC (~~(173-303-070 (7)(c) and (d))~~) 173-303-169, in the calendar month that the dangerous waste determination was made.

(c) A trained professional must accompany all dangerous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When dangerous hazardous waste is removed from the laboratory:

(i) Large quantity generators and medium quantity generators (~~(regulated under WAC 173-303-201)~~) must ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(ii) Small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in WAC (~~(173-303-070 (8)(b))~~) 173-303-171 (1)(c) for dangerous waste.

(e) An unwanted material that is a dangerous waste is subject to all applicable dangerous waste regulations when it is removed from the laboratory.

(12) Making the dangerous waste determination at an on-site central accumulation area. If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material at an on-site central accumulation area, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of WAC 173-303-200 (~~((1)(b)(i))~~) for large quantity generators or WAC (~~(173-303-201 and 173-303-202 for)~~) 173-303-172 for medium quantity generators (~~(regulated under WAC 173-303-201)~~) as soon as it arrives in the central accumulation area.

(d) A trained professional must determine, pursuant to WAC 173-303-070(3), if the unwanted material is a dangerous waste within four calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous waste" on the container label that is affixed or attached to the container, within four calendar days of arriving at the on-site central accumulation area and before the dangerous waste may be removed from the on-site central accumulation area;

(ii) Write the appropriate dangerous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste may be treated or disposed of on-site or transported off-site;

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC (~~(173-303-070 (7)(c) and (d))~~) 173-303-169 in the calendar month that the dangerous waste determination was made; and

(iv) Manage the dangerous waste according to all applicable dangerous waste regulations.

(13) Making the dangerous waste determination at an on-site interim status or permitted treatment, storage or disposal facility.

If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's dangerous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional must determine, pursuant to WAC 173-303-070(3), if the unwanted material is a dangerous waste within four calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous waste" on the container label that is affixed or attached to the container within four calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the dangerous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility; and

(ii) Write the appropriate dangerous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste may be treated or disposed on-site or transported off-site; and

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC (~~(173-303-070 (7)(c) and (d))~~) 173-303-169 in the calendar month that the dangerous waste determination was made; and

(iv) Manage the dangerous waste according to all applicable dangerous waste regulations.

(14) Laboratory clean-outs.

(a) One time per twelve-month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of this section, except that:

(i) If the volume of unwanted material in the laboratory exceeds fifty-five gallons (or one quart of liquid or 2.2

pounds of solid reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of liquid or 2.2 pounds of solid reactive acutely hazardous unwanted material), as required by subsection (9) of this section. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within thirty calendar days from the start of the laboratory clean-out; and

(ii) For the purposes of on-site accumulation, an eligible academic entity is not required to count a dangerous waste that is an unused commercial chemical product (listed in WAC 173-303-9903, or exhibiting one or more characteristics in WAC 173-303-090 or exhibits a state criteria in WAC 173-303-100) generated solely during the laboratory clean-out toward its dangerous waste generator status, pursuant to WAC ((~~173-303-070 (7)(e) and (d)~~) 173-303-169). An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward dangerous waste generator status, pursuant to WAC ((~~173-303-070 (7)(e) and (d)~~) 173-303-169), if it is determined to be dangerous waste;

(iii) For the purposes of off-site management, an eligible academic entity must count all its dangerous waste, regardless of whether the dangerous waste was counted toward generator status under (a)(ii) of this subsection, and if it generates more than 2.2 pounds/month of acute hazardous waste, more than 2.2 pounds of WT01 EHW or more than two hundred twenty pounds/month of dangerous waste, the dangerous waste is subject to all applicable dangerous waste regulations when it is transported off-site; and

(iv) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of dangerous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of five years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same twelve-month period, an eligible academic entity is subject to all the applicable requirements of this section including, but not limited to:

(i) The requirement to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by subsection (9) of this section; and

(ii) The requirement to count all dangerous waste, including unused dangerous waste, generated during the laboratory clean-out toward its dangerous waste generator status, pursuant to WAC ((~~173-303-070 (7)(e) and (d)~~) 173-303-169).

(15) Laboratory management plan. An eligible academic entity must develop and retain a written laboratory management plan, or revise an existing written plan. The laboratory management plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with this section. An eligible aca-

demically entity may write one laboratory management plan for all the laboratories owned by the eligible academic entity that have opted into this section, even if the laboratories are located at sites with different EPA/state identification numbers. The laboratory management plan must contain two parts with a total of nine elements identified in (a) and (b) of this subsection. In Part I of its laboratory management plan, an eligible academic entity must describe its procedures for each of the elements listed in (a) of this subsection. An eligible academic entity must implement and comply with the specific provisions that it develops to address the elements in Part I of the laboratory management plan. In Part II of its laboratory management plan, an eligible academic entity must describe its best management practices for each of the elements listed in (b) of this subsection. The specific actions taken by an eligible academic entity to implement each element in Part II of its laboratory management plan may vary from the procedures described in the eligible academic entity's laboratory management plan, without constituting a violation of this section. An eligible academic entity may include additional elements and best management practices in Part II of its laboratory management plan if it chooses.

(a) The eligible academic entity must implement and comply with the specific provisions of Part I of its laboratory management plan. In Part I of its laboratory management plan, an eligible academic entity must:

(i) Describe procedures for container labeling in accordance with subsection (7)(a) of this section, as follows:

(A) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(B) Identifying the manner in which information that is "associated with the container" will be imparted.

(ii) Identify whether the eligible academic entity will comply with subsection (9)(a)(i) or (ii) of this section for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its laboratory management plan, an eligible academic entity must:

(i) Describe its intended best practices for container labeling and management (see the required standards in subsection (7) of this section).

(ii) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties (see the required standards in subsection (8)(a) of this section).

(iii) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals (see the required standards in subsection (8)(d)(i) of this section).

(iv) Describe its intended best practices for removing unwanted material from the laboratory, including:

(A) For regularly scheduled removals - Develop a regular schedule for identifying and removing unwanted materials from its laboratories (see the required standards in subsection (9)(a)(i) and (ii) of this section).

(B) For removals when maximum volumes are exceeded:

(I) Describe its intended best practices for removing unwanted materials from the laboratory within ten calendar days when unwanted materials have exceeded their maximum volumes (see the required standards in subsection (9)(d) of this section).

(II) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(v) Describe its intended best practices for making dangerous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards in WAC 173-303-070(~~(7)~~) (3) and subsections (10) through (13) of this section).

(vi) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in subsection (14) of this section, including:

(A) Procedures for conducting laboratory clean-outs (see the required standards in subsection (14)(a)(i) through (iii) of this section); and

(B) Procedures for documenting laboratory clean-outs (see the required standards in subsection (14)(a)(iv) of this section).

(vii) Describe its intended best practices for emergency prevention, including:

(A) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory;

(B) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade;

(C) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(D) Procedures for the timely designation of unknown chemicals.

(c) An eligible academic entity must make its laboratory management plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity must review and revise its laboratory management plan, as needed.

(16) Unwanted material that is not solid or dangerous waste.

(a) If an unwanted material does not meet the definition of solid waste in WAC 173-303-016, it is no longer subject to this section or to the dangerous waste regulations.

(b) If an unwanted material does not meet the definition of dangerous waste in WAC 173-303-070(~~(2)~~), it is no longer subject to this subsection or to the dangerous waste regulations, but must be managed in compliance with any other applicable regulations and/or conditions.

(17) Nonlaboratory dangerous waste generated at an eligible academic entity. An eligible academic entity that generates dangerous waste outside of a laboratory is not eligible to manage that dangerous waste under this section; and

(a) Remains subject to the generator requirements of WAC 173-303-070(3), 173-303-170, 173-303-172 for medium quantity generators, and 173-303-200(~~(4)~~) through 173-303-201 for large quantity generators and (~~generators~~

~~regulated under WAC 173-303-201 and~~) all other applicable generator requirements of chapter 173-303 WAC, with respect to that dangerous waste; or

(b) Remains subject to the conditional exemption of WAC (~~(173-303-070(8))~~) 173-303-171 for small quantity generators, with respect to that dangerous waste.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-240 Requirements for transporters of dangerous waste.** (1) Applicability. This section establishes standards that apply to persons transporting dangerous waste and transporters who own or lease and operate a transfer facility.

(2) A transporter must have a current EPA/state ID#. Transporters must comply with the notification and identification requirements of WAC 173-303-060. A transporter who has previously obtained an EPA/state ID# in another state is not required to obtain a new ID# when operating in Washington state. Transporters who must comply with the generator requirements as a result of a spill at a transfer facility or during transport must obtain a separate generator EPA/state ID# for the spill.

(3) Any person who transports a dangerous waste must comply with the requirements of WAC 173-303-240 through 173-303-270, when the dangerous waste must be manifested in accordance with WAC 173-303-180.

(4) Any person who transports a dangerous waste must also comply with the requirements of WAC 173-303-170 through 173-303-230 for generators, if (~~he~~) they:

(a) Transport(~~s~~) dangerous waste into the state from another country; or

(b) (~~Mixes~~) Mix dangerous waste of different United States DOT shipping descriptions by mixing them into a single container.

(5) These requirements do not apply to on-site (as defined in WAC 173-303-040) transportation of dangerous waste by generators, or by owners or operators of permitted TSD facilities.

(6) Transfer facility. The requirements of this subsection apply to a transporter or marine terminal operator who owns or leases and operates a transfer facility. Transfer of a shipment of dangerous waste from one transport vehicle to another transport vehicle, from one container to another container, and from one transporter to another transporter and any ten-day storage activities may only occur at a transfer facility that is registered with the department. A transporter may store manifested shipments of dangerous waste in containers meeting the requirements of WAC 173-303-190 (1), (2), (3), and (5) for ten days or less at a transfer facility, without complying with the final facility requirements of WAC 173-303-600 and without obtaining a storage permit under WAC 173-303-800, provided that (~~he or she complies~~) they comply with the following:

(a) A transporter who owns or leases and operates a transfer facility within Washington that is related to their dangerous waste transportation activities must register with the department. Washington registration is not required for a transporter whose activities are limited to passing through

Washington with shipments of dangerous waste or picking up shipments from Washington generators or delivering shipments to designated treatment, storage or disposal facilities. In order to obtain registration, a transporter must complete a Dangerous Waste Site Identification Form according to the instructions and submit it to the department;

(b) Maintains ten-day storage records that include the dates that a manifested shipment of dangerous waste entered the facility and departed the facility. The ten-day records must be retained for a period of three years from the date the shipment was transported from the transfer facility;

(c) WAC 173-303-310 (1) and (2)((;)) (Security). Instead of WAC 173-303-310(2) for an enclosed or an open flatbed transport vehicle parked at a transfer facility that has no twenty-four-hour surveillance system or natural or artificial barrier, the transport vehicle must meet the placarding requirements of 49 C.F.R. Part 172 and be secured (that is, locked) or the shipment must be transferred to a secured area of the facility to prevent unknowing entry and minimize unauthorized entry;

(d) WAC 173-303-320((;)) General inspection. Instead of keeping inspection records for a period of five years from the date of inspection in WAC 173-303-320 (2)(d), inspection records must be kept at the transfer facility for one year from the date of inspection;

(e) WAC 173-303-330((;)) Personnel training;

(f) WAC 173-303-340((;)) Preparedness and prevention except WAC 173-303-340(3)((;)) (Aisle space);

(g) WAC 173-303-350((;)) Contingency plan and emergency procedures;

(h) WAC 173-303-360((;)) Emergencies;

(i) WAC 173-303-630 (2), (3), (4), (5)(a) and (b), (8), (9)(a) and (b) and (10)((;)) (Use and management of containers). In addition, when consolidating the contents of two or more containers with the same dangerous waste into a container, or when combining and consolidating two different dangerous wastes that are compatible with each other, the transporter must label or mark each container in accordance with WAC 173-303-630(3) and with the applicable dangerous waste number(s) (dangerous waste codes);

(j) WAC 173-303-630(7) in areas where waste is transferred from container to container and in areas where containers are stored outside in the weather. The secondary containment system must be completed by October 15, 2001. The department may, on a case-by-case basis, grant an extension to the required completion date if the transporter has a design and has entered into binding financial or other agreements for construction prior to October 15, 2001;

(k) The requirements of WAC 173-303-630(7) may be required in areas other than those described in WAC 173-303-240 (6)(j) if the department determines that there is a potential threat to public health and the environment due to the nature of the wastes being stored or due to a history of spills or releases from waste stored in containers.

(7) Transporter exemptions. A transporter will not be required to comply with the following:

(a) The requirements of WAC 173-303-240(6) in the event of an emergency or other unforeseen event beyond the reasonable control of the transporter during transit over public highway, rail track or water route and the waste shipment

is loaded, reloaded or transferred to another transport vehicle or container to facilitate transportation;

(b) The requirements of WAC 173-303-240 (6)(i) and (j) for dangerous waste that is stored in a secured, enclosed transport vehicle, intermodal container or portable tank during the time it is parked at a transfer facility;

(c) The requirements of WAC 173-303-240 (6)(i) and (j) for a transfer facility that is located at a pier, dock or barge unloading facility and associated with the loading and unloading of water vessels: Provided, That the dangerous waste shipment is stored within a transport unit, as defined under 49 C.F.R. Part 176, and accepted by the approval authority of the United States Coast Guard;

(d) The requirements of WAC 173-303-240 (6)(j) for dangerous waste that is stored within a building: Provided, That the floor is compatible with and sufficiently impervious to the waste stored and is designed and operated so that any release or spill will be captured within the building and will prevent any waste from migrating to the soil, groundwater or surface water.

(8) A transporter who accumulates or stores manifested shipments of dangerous waste for more than ten days at a transfer facility is subject to the dangerous waste management facility general requirements and permit requirements of this chapter with respect to the storage of those wastes.

(9) Reference to WAC 173-303-200 in 173-303-240(4) does not constitute authority for storage in excess of ten days for a transporter who owns or leases and operates a transfer facility.

(10) The regulations in WAC 173-303-250 through 173-303-260 do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with WAC 173-303-400 (2)(c)(xiii)(A)(IV) or (xiii)(D) or WAC 173-303-600 (3)(p)(i)(D) or (3)(p)(iv), and WAC 173-303-800 (7)(c)(i)(C) or (D).

(11) A transporter of hazardous waste subject to the manifesting requirements of WAC 173-303-180 or to the universal waste management standards of WAC 173-303-573, that is being imported from or exported to any ~~((of the countries listed in 40 C.F.R. 262.58 (a)(1)))~~ other country for purposes of recovery or disposal is subject to this section and to all other relevant requirements of 40 C.F.R. Subpart H of Part 262((;)) including, but not limited to, 40 C.F.R. 262.83 and 262.84 for movement documents. 40 C.F.R. Subpart H is incorporated by reference at WAC 173-303-230(1).

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-250 Dangerous waste acceptance, transport, and delivery.** (1)(a) A transporter may not accept dangerous waste from a generator unless the transporter is also provided with a manifest signed in accordance with WAC 173-303-180(3)((;)) (Manifest procedures) or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with WAC 173-303-180(9) and signed with a valid and enforceable electronic signature as described in WAC 173-303-180(11).

(b) ~~((In the case of exports other than those))~~ Exports. For exports of dangerous waste subject to 40 C.F.R. 262 Sub-

part H (~~part 262~~) (which is incorporated by reference at WAC 173-303-230(1)), a transporter may not accept such waste (~~from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter must also be provided with an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of 40 C.F.R. subpart H part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 C.F.R. 262.84~~) without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 C.F.R. Part 262.83(d).

(2) Before transporting a dangerous waste shipment, the transporter must sign and date the manifest, acknowledging acceptance of the dangerous waste. The transporter must return a signed copy to the generator before commencing transport.

(3) The transporter must insure that the manifest accompanies the dangerous waste shipment. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 C.F.R. Part 262.83(d) also accompanies the dangerous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 C.F.R. Part 262.84(d) also accompanies the dangerous waste.

(4) A transporter who delivers a dangerous waste to another transporter, or to the designated facility must:

(a) Obtain the date of delivery and the handwritten signature of that transporter or designated facility owner/operator on the manifest;

(b) Retain one copy of the manifest in accordance with WAC 173-303-260, Transporter recordkeeping; and

(c) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(5) The transporter must deliver the entire quantity of dangerous waste which (~~he has~~) they have accepted from a generator or a transporter to:

(a) The designated facility listed on the manifest; or

(b) The alternate designated facility, if the dangerous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(c) The next designated transporter; or

(d) The place outside the United States designated by the generator.

(6)(a) If the dangerous waste cannot be delivered in accordance with subsection (5) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(b) If dangerous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with WAC 173-303-260, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in WAC 173-303-370 (5)(e)(i) through (vi) or 173-303-370 (5)(f)(i) through (vi).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with WAC 173-303-260, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with WAC 173-303-370 (5)(e)(i) through (vi).

(7) The requirements of subsections (3), (4), and (8) of this section do not apply to water (bulk shipment) transporters if:

(a) The dangerous waste is delivered by water (bulk shipment) to the designated facility; and

(b) A shipping paper containing all the information required on the manifest (excluding the EPA/state identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 C.F.R. part 262.83(d) or 262.84(d) accompanies the dangerous waste; and

(c) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(d) The person delivering the dangerous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(e) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with WAC 173-303-260(2).

(8) For shipments involving rail transportation, the requirements of subsections (3), (4), and (7) of this section do not apply and the following requirements do apply.

(a) When accepting dangerous waste from a nonrail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the dangerous waste;

(ii) Return a signed copy of the manifest to the nonrail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next nonrail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with WAC 173-303-260(2).

(b) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA/state identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 C.F.R. Part 262.83(d) or 262.84(d) accompanies the dangerous waste at all times. (Note: Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.)

(c) When delivering dangerous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with WAC 173-303-260(2).

(d) When delivering dangerous waste to a nonrail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with WAC 173-303-260(2).

(e) Before accepting dangerous waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(9) Transporters who transport dangerous waste out of the United States must:

(a) Sign and date the manifest in the international shipments block to indicate the date that the shipment left the United States;

(b) Retain one copy in accordance with WAC 173-303-260(3), Transporter recordkeeping;

(c) Return a signed copy of the manifest to the generator; and

(d) For paper manifest only:

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in WAC 173-303-370 (2)(c); and

(ii) For shipments initiated prior to the automated export system (AES) filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(10) Use of electronic manifest.

(a) Legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with WAC 173-303-180(9) and used in accordance with this section are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in this section to obtain, complete, sign, provide, give, use or retain a manifest.

(i) Any requirement in this section to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of WAC 173-303-180(11).

(ii) Any requirement in this section to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iii) Any requirement in this section for a manifest to accompany a dangerous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 40 C.F.R. Part 177.817, a dangerous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle. In addition, the one printed copy of the electronic manifest must provide the information required in WAC 173-303-180(6) for state-only dangerous waste that designates only by the criteria under WAC 173-303-100.

(iv) Any requirement in this section for a transporter to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the transporter's account on the national e-Manifest system, provided that such copies are readily available for viewing and production upon request.

(v) A transporter may not be held liable for the inability to produce an electronic manifest for inspection under this section if the transporter can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA's electronic manifest system for which the transporter bears no responsibility.

(b) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(c) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the dangerous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to (a)(iii) of this subsection, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to

provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the dangerous waste.

(ii) On each printed copy, the transporter shall include a notation in the special handling and additional description space (Item 14) that the paper manifest is a replacement manifest for the manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the dangerous waste must ensure that each paper copy is individually signed and that a legible handwritten ink signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(d) Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of this signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgment of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with (a)(iii) of this subsection. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(e) Imposition of user fee. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees will be published as an appendix to 40 C.F.R. Part 262, by EPA.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-270 Discharges during transport.** In the event of a spill or discharge of dangerous waste during transportation, the transporter must comply with the requirements of WAC 173-303-145, Spills and discharges into the environment. In addition to the notices required by WAC

173-303-145, the transporter must provide the following notifications:

(1) Give notice to the generator of the waste that a discharge has occurred;

(2) Give notice to the National Response Center (800-424-8802 or ((202-426-2675)) 202-267-2675 or online at <http://www.nrc.uscg.mil>), if required by 49 C.F.R. 171.15;

(3) Submit a written Hazardous Materials Incident Report as required by 49 C.F.R. 171.16 to the Information Systems Manager, ((PHH-63)) PHH-60, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, East Building, 1200 New Jersey Ave. S.E., Washington D.C., 20590-0001, or an electronic Hazardous Material Incident Report to the Information System Manager, ((DHM-63, Research and Special Programs Administration,)) PHH-60, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington D.C., 20590-0001 at <http://hazmat.dot.gov>; and,

(4) For a water (bulk shipment) transporter, give the same notice as required by 33 C.F.R. 153.203 for oil and hazardous substances.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-290 Required notices.** (1)(a) The facility owner or operator who is arranging to receive, or has arranged to receive, or is receiving dangerous waste from sources outside the United States must notify the appropriate regional office of the department annually, and in writing at least four weeks in advance of the date the first shipment of waste is expected to arrive at the facility. The notification must be in writing, signed by the importer and operator of the receiving facility, and include the following information:

(i) Name, street address, mailing address, and telephone number of the exporter.

(ii) Name, street address, mailing address, telephone number, and EPA/state ID number of the importer and receiving facility.

(iii) A description of the dangerous waste and the EPA/state waste numbers, U.S. DOT proper shipping name, hazard class and ID number (UN\NA) for each hazardous waste as identified in 49 C.F.R. Parts 171 through 177.

(iv) The estimated frequency or rate at which such waste is to be imported and the period of time over which such waste is to be imported.

(v) The estimated total quantity of the dangerous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22).

(vi) A description of the manner by which the dangerous waste will be treated, stored, disposed of, or recycled by the receiving facility.

Upon request by the department, the importer and/or receiving facility must furnish to the department any additional information regarding the importation of dangerous waste.

(b) The owner or operator of a ((recovery)) facility that is arranging to receive, or has arranged to receive ((hazardous)), or is receiving dangerous waste subject to 40 C.F.R. Part 262, Subpart H (incorporated by reference at WAC 173-303-

230(1)) (must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, email without a digital signature followed by mail, or fax followed by mail.) from a foreign source must submit the following required notices:

(i) As per 40 C.F.R. 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 C.F.R. 262.84(b)(1) at least sixty days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(ii) As per 40 C.F.R. 262.84 (d)(2)(xv), a copy of the movement document bearing all required signatures within three working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least three years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the owner or operator of a facility bears no responsibility.

(iii) As per 40 C.F.R. 262.84 (f)(4), if the facility has physical control of the waste and it must be sent to an alter-

nate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 C.F.R. 262.84 (b)(1) of the need to return or arrange alternate management of the shipment.

(iv) As per 40 C.F.R. 262.84(g), such owner or operator shall:

(A) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(B) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in 40 C.F.R. 262.81.

(2) Before transferring ownership or operation of a facility during its active life or post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this chapter 173-303 WAC.

(3) The owner or operator of a facility that receives dangerous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that (~~he has~~) they have the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record required under WAC 173-303-380(1).

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

**WAC 173-303-320 General inspection.** (1) The owner or operator must inspect (~~his~~) their facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of dangerous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(2) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that help prevent, detect, or

respond to hazards to the public health or the environment. In addition:

- (a) The schedule must be kept at the facility;
- (b) The schedule must identify the types of problems which are to be looked for during inspections;
- (c) The schedule must indicate the frequency of inspection for specific items. The frequency should be based on the rate of possible deterioration of equipment, and the probability of an environmental or human health incident. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum the inspection schedule must also include the applicable items and frequencies required for the specific waste management methods described in 40 C.F.R. Part 265 Subparts F through R, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090, for interim status facilities and in WAC 173-303-630 through 173-303-680, and 40 C.F.R. 264.1033, 264.1052, 264.1053, 264.1058 and 264.1083 through 264.1089 for final status facilities and be submitted with Part B of the permit application. The department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of the review, the department may modify or amend the schedule as may be necessary; and

(d) The owner or operator must keep ~~((an))~~ a written or electronic inspection log or summary, including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made, an account of spills or discharges in accordance with WAC 173-303-145, and the date and nature of any repairs or remedial actions taken. The log or summary must be kept at the facility for at least five years from the date of inspection.

(3) The owner or operator must remedy any problems revealed by the inspection, on a schedule which prevents hazards to the public health and environment. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-350 Contingency plan and emergency procedures.** (1) Purpose. The purpose of this section and WAC 173-303-360 is to lessen the potential impact on the public health and the environment in the event of ~~((an))~~ any emergency ~~((circumstance))~~ event, including, but not limited to, a fire, natural disaster, explosion, or unplanned sudden or nonsudden release of dangerous waste, hazardous substance, or dangerous waste constituents to air, soil, surface water, or groundwater by a facility. A contingency plan must be developed to lessen the potential impacts of such emergency ~~((circumstances))~~ event, and the plan must be implemented immediately ~~((in))~~ whenever such an emergency ~~((circumstances))~~ event occurs.

(2) Contingency plan. Each owner or operator must have a contingency plan at ~~((his))~~ their facility for use in emergencies or any sudden or nonsudden releases which threaten human health and the environment. If the owner or operator has already prepared a spill prevention control and counter-

measures (SPCC) plan in accordance with Part 112 of Title 40 C.F.R., or some other emergency or contingency plan, they need only amend that plan to incorporate dangerous waste management provisions that are sufficient to comply with the requirements of this section and WAC 173-303-360. The owner or operator may develop one contingency plan that meets all regulatory requirements. Ecology recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan") ~~((as found at www.nrt.org))~~. When modifications are made to nondangerous waste (non-Hazardous Waste Management Act or non-dangerous waste regulation) provisions in an integrated contingency plan, the changes do not trigger the need for a dangerous waste permit modification.

(3) The contingency plan must contain the following:

(a) A description of the actions which facility personnel must take to comply with this section and WAC 173-303-360;

(b) A description of the actions which will be taken in the event that a dangerous waste shipment, which is damaged or otherwise presents a hazard to the public health and the environment, arrives at the facility, and is not acceptable to the owner or operator, but cannot be transported, pursuant to the requirements of WAC 173-303-370(6), Manifest system, reasons for not accepting dangerous waste shipments;

(c) A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services as required in WAC 173-303-340(4);

(d) A current list of names, addresses, and phone numbers (office and home) of all persons qualified to act as the emergency coordinator required under WAC 173-303-360(1). Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates. For new facilities only, this list may be provided to the department at the time of facility certification (as required by WAC 173-303-810 (14)(a)(i)), rather than as part of the permit application;

(e) A list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems, and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

(f) An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe the signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes.

(4) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(5) Amendments. The owner or operator must review and immediately amend the contingency plan, if necessary, whenever:

- (a) Applicable regulations or the facility permit are revised;
- (b) The plan fails in an emergency;
- (c) The facility changes (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of dangerous waste or dangerous waste constituents, or in a way that changes the response necessary in an emergency;
- (d) The list of emergency coordinators changes; or
- (e) The list of emergency equipment changes.

**AMENDATORY SECTION** (Amending WSR 00-11-040, filed 5/10/00, effective 6/10/00)

**WAC 173-303-360 Emergencies.** (1) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, required by WAC 173-303-350(2), all operations and activities at the facility, the location and properties of all wastes handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

(2) Emergency procedures. The following procedures must be implemented in ~~((the event of an))~~ any emergency event identified in WAC 173-303-350.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or ~~((his))~~ their designee when the emergency coordinator is on call) must immediately:

- (i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (ii) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health and the environment (considering direct, indirect, immediate, and long-term effects) that may result from the release, fire, or explosion.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment, ~~((he))~~ they must report ~~((his))~~ their findings as follows:

(i) If ~~((his))~~ their assessment indicates that evacuation of local areas may be advisable, ~~((he))~~ they must immediately notify appropriate local authorities. ~~((He))~~ They must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) ~~((He))~~ They must immediately notify the department and either the government official designated as the on-scene coordinator, or the National Response Center (using their 24-hour toll free number (800) 424-8802).

(e) ~~((His))~~ Their assessment report must include:

- (i) Name and telephone number of reporter;
- (ii) Name and address of facility;
- (iii) Time and type of incident (e.g., release, fire);
- (iv) Name and quantity of material(s) involved, to the extent known;
- (v) The extent of injuries, if any; and
- (vi) The possible hazards to human health or the environment outside the facility.

(f) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other dangerous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(g) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(h) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(i) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(i) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(j) The owner or operator must notify the department, and appropriate local authorities, that the facility is in compliance with (i) of this subsection before operations are resumed in the affected area(s) of the facility.

(k) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, ~~((he))~~ they must submit a written report on the incident to the department. The report must include:

- (i) Name, address, and telephone number of the owner or operator;
- (ii) Name, address, and telephone number of the facility;
- (iii) Date, time, and type of incident (e.g., fire, explosion);
- (iv) Name and quantity of material(s) involved;
- (v) The extent of injuries, if any;
- (vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable;
- (vii) Estimated quantity and disposition of recovered material that resulted from the incident;
- (viii) Cause of incident; and

(ix) Description of corrective action taken to prevent reoccurrence of the incident.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-370 Manifest system.** (1) Applicability. The requirements of this section apply to owners and operators of permitted treatment, storage, and disposal facilities and of dangerous waste recycling facilities operating under the requirements of this chapter who receive dangerous waste from off-site sources or who initiates a shipment of dangerous waste off-site. If a facility receives dangerous waste accompanied by a manifest, the owner, operator, or ~~((his/her))~~ their agent must sign and date the manifest as indicated in subsection (2) of this section to certify that the dangerous waste covered by the manifest was received, that the dangerous waste was received except as noted in the discrepancy space of the manifest, or that the dangerous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives dangerous waste shipment accompanied by a manifest, the owner, operator, or their agent, must:

- (a) Sign and date, by hand, each copy of the manifest;
- (b) Note any discrepancies (as defined in subsection (5)(a) of this section) on each copy of the manifest;
- (c) Immediately give the transporter at least one copy of the manifest;

(d) Within thirty days of delivery, send a copy of the manifest to the generator; ~~((and))~~

(e) Within thirty days of delivery, send the top copy (Page 1) of the manifest to the electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this subsection must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system; and

(f) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

~~(3) ((If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-))~~ The owner or operator of a facility receiving dangerous waste subject to 40 C.F.R. Part 262, Subpart H (as incorporated by reference at WAC 173-303-230(1)) from a foreign source must:

(a) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is

needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(b) Send a copy of the manifest within thirty days of delivery to EPA using the addresses listed in 40 C.F.R. 262.82(e) until the facility can submit such a copy to the e-Manifest system per subsection (2)(e) of this section.

(4) If a facility receives, from a rail or water (bulk shipment) transporter, dangerous waste which is accompanied by a manifest or shipping paper containing all the information required on the manifest (excluding the EPA/state identification numbers, generator's certification, and signatures), the owner or operator, or ~~((his or her))~~ their agent, must:

(a) Sign and date each copy of the manifest or shipping paper to certify that the dangerous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies in the manifest or shipping paper, as described in subsection (5) of this section, on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper;

(d) Within thirty days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within thirty days after delivery) to the generator; and

(e) Retain at the facility a copy of each shipping paper and manifest for at least three years from the date of delivery.

(5) Manifest discrepancies.

(a) Manifest discrepancies are:

(i) Significant differences (as defined in (b) of this subsection) between the quantity or type of dangerous waste designated on the manifest or shipping paper, and the quantity and type of dangerous waste a facility actually receives;

(ii) Rejected wastes, which may be a full or partial shipment of dangerous waste that the TSDF cannot accept; or

(iii) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in WAC 173-303-160(2).

(b) Significant differences in quantity are: For bulk waste, variations greater than ten percent in weight (for example, tanker trucks, railroad tank cars, etc.); for batch waste, any variations in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within fifteen days after receiving the waste, the owner or operator must immediately submit to the department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(i) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in WAC 173-303-160(2), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible

to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within sixty days of the rejection or the container residue identification.

(ii) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under (e) or (f) of this subsection.

(e) Except as provided in (e)(vii) of this ~~(section)~~ subsection, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with WAC 173-303-180 and the following instructions:

(i) Write the generator's ~~(U.S.)~~ EPA/state ID ~~((number))~~ in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(ii) Write the name of the alternate designated facility and the facility's ~~(U.S. EPA ID number)~~ EPA/state ID# in the designated facility block (Item 8) of the new manifest.

(iii) Copy the manifest tracking number found in Item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(iv) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (Item 18a).

(v) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(vi) Sign the generator's/offeree's certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(vii) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the alternate facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with (e)(i), (ii), (iii), (iv), (v), and (vi) of this subsection.

(f) Except as provided in (f)(vii) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with WAC 173-303-180 and the following instructions:

(i) Write the facility's ~~(U.S. EPA ID number)~~ EPA/state ID# in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(ii) Write the name of the initial generator and the generator's ~~(U.S. EPA ID number)~~ EPA/state ID# in the designated facility block (Item 8) of the new manifest.

(iii) Copy the manifest tracking number found in Item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(iv) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (Item 18a).

(v) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(vi) Sign the generator's/offeree's certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(vii) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the alternate facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with (f)(i), (ii), (iii), (iv), (v), (vi), and (viii) of this subsection.

(viii) For full or partial load rejections and container residues contained in nonempty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in WAC 173-303-220(2).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in WAC 173-303-160(2) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within thirty days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(6) Reasons for not accepting dangerous waste shipments. The owner or operator may decide that a dangerous shipment should not be accepted by ~~(his)~~ their facility.

(a) The following are acceptable reasons for denying receipt of a dangerous waste shipment:

(i) The facility is not capable of properly managing the type(s) of dangerous waste in the shipment;

(ii) There is a significant discrepancy (as described in subsection (5) of this section) between the shipment and the wastes listed on the manifest or shipping paper; or

(iii) The shipment has arrived in a condition which the owner or operator believes would present an unreasonable hazard to facility operations, or to facility personnel handling the dangerous waste(s) (including, but not limited to, leaking or damaged containers, and improperly labeled containers).

(b) The owner or operator may send the shipment on to the alternate facility designated on the manifest or shipping paper, or contact the generator to identify another facility capable of handling the waste and provide for its delivery to that other facility, unless, the containers are damaged to such an extent, or the dangerous waste is in such a condition as to present a hazard to the public health or the environment in the process of further transportation.

(c) If the dangerous waste shipment cannot leave the facility for the reasons described in (b) of this subsection, then the owner or operator must take those actions described in the contingency plan, WAC 173-303-350 (3)(b).

(7) Within three working days of the receipt of a shipment subject to 40 C.F.R. Part 262, Subpart H (which is incorporated by reference at WAC 173-303-230(1)), the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the ~~((exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460, and to competent authorities of all other concerned countries))~~ foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of dangerous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

(8) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(9) Whenever a shipment of dangerous waste is initiated from a facility, the owner or operator of that facility must

comply with the requirements of this chapter. The provisions of WAC 173-303-172, 173-303-174, and 173-303-200 through 173-303-201 of this chapter are applicable to the on-site accumulation of dangerous waste by generators. Therefore, the provisions of WAC 173-303-170, 173-303-172, 173-303-174, and 173-303-200 through 173-303-201 of this chapter only apply to owners or operators who are shipping dangerous waste which they generated at that facility or operating as a large quantity generator consolidating dangerous waste from small quantity generators under WAC 173-303-200(15).

(10) Use of electronic manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with WAC 173-303-180(9) and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in this section to obtain, complete, sign, provide, use or retain a manifest.

(i) Any requirement in this section for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of WAC 173-303-180(11).

(ii) Any requirement in this section to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iii) Any requirement in this section for a manifest to accompany a dangerous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the dangerous waste shipment.

(iv) Any requirement in this section for an owner or operator of a facility to keep or retain a copy of each manifest is satisfied by retention of the facility's electronic manifest copies in its account on the national e-Manifest system, provided that such copies are readily available for viewing and production upon request.

(v) An owner or operator of a facility may not be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA's electronic manifest system for which the owner or operator bears no responsibility.

(b) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(c) Special procedures applicable to replacement manifests. If a facility receives dangerous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the dangerous waste by the final transporter:

(i) Upon delivery of the dangerous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification or Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the replacement manifest;

(ii) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

(iii) Within thirty days of delivery of the dangerous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the EPA e-Manifest system; and

(iv) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least five years from the date of delivery.

(d) Special procedures for electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of this signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy for at least five years from the date of delivery of the waste.

(e) Imposition of user fee. An owner or operator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination and processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under subsection (2)(e) of this section. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees will be published as an appendix to 40 C.F.R. Part 262, by EPA.

(f) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in WAC 173-303-180(11).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-380 Facility recordkeeping.** (1) Operating record. The owner or operator of a facility must keep a written operating record at their facility. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description of and the quantity of each dangerous waste received or managed on-site, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as

required by subsection (2) of this section, recordkeeping instructions;

(b) The location of each dangerous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each dangerous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(c) Records and results of waste analyses, waste determinations (as required by 40 C.F.R. Parts 264 and 265, Subpart CC), and trial tests required by WAC 173-303-300, General waste analysis, and by 40 C.F.R. sections 264.1034, 264.1063, 264.1083, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7. Note that data from laboratory analyses for 40 C.F.R. 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110;

(d) Summary reports and details of all incidents that require implementing the contingency plan, as specified in WAC 173-303-360 (2)(k);

(e) Records and results of inspections as required by WAC 173-303-320 (2)(d), General inspection (except such information need be kept only for five years);

(f) Monitoring, testing, or analytical data, and corrective action where required by 40 C.F.R. Part 265 Subparts F through R and sections 265.1034 (c) through (f), 265.1035, 265.1063 (d) through (i), 265.1064, and 265.1083 through 265.1090 for interim status facilities (incorporated by reference at WAC 173-303-400(3)), and by WAC 173-303-630 through 173-303-695 and 40 C.F.R. sections 264.1034 (c) through (f), 264.1035, 264.1063 (d) through (i), 264.1064, and 264.1082 through 264.1090 for final status facilities (incorporated by reference at WAC 173-303-690, 173-303-691, and 173-303-692). Note that data provided from laboratory analyses for WAC 173-303-400(3) which incorporates by reference 40 C.F.R. Part 265 Subparts F through R, WAC 173-303-140 (4)(b), 173-303-395(1), 173-303-630 through 173-303-680, 173-303-693 and 173-303-695, 40 C.F.R. 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110;

(g) All closure and post-closure cost estimates required for the facility;

(h) For off-site facilities, copies of notices to generators informing them that the facility has all appropriate permits, as required by WAC 173-303-290, Required notices;

(i) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 40 C.F.R. 268.5, a petition pursuant to 40 C.F.R. 268.6, and the applicable notice required by a generator under 40 C.F.R. 268.7(a);

(j) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(k) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(l) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 40 C.F.R. 268.7;

(m) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 40 C.F.R. 268.7, except for the manifest number;

(n) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(o) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(p) Any records required under WAC 173-303-280(6);

(q) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that they generate to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment; and

(r) Certifications of major repairs to tank systems as required by WAC 173-303-640 (7)(f).

(2) Recordkeeping instructions. This subsection provides instructions for recording the portions of the operating record which are related to describing the types, quantities, and management of dangerous wastes at the facility. This information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility, as follows:

(a) Each dangerous waste received, treated, stored, or disposed of at the facility must be described by its common name and by its dangerous waste number(s) from WAC 173-303-080 through 173-303-104. Each listed, characteristic, and criteria waste has its own four-digit dangerous waste number. Where a dangerous waste contains more than one process waste or waste constituent the waste description must include all applicable dangerous waste numbers. If the dangerous waste number is not listed in WAC 173-303-9903 or 173-303-9904, the waste description must include the process which generated the waste;

(b) The waste description must include the waste's physical form (i.e., liquid, solid, sludge, or contained gas);

(c) The estimated or manifest-reported weight, or volume and density, where applicable, of the dangerous waste must be recorded, using one of the units of measure specified in Table 1, below; and

Table 1

| Unit of Measure            | Code <sup>1</sup> |
|----------------------------|-------------------|
| Gallons . . . . .          | G                 |
| Gallons per Hour . . . . . | E                 |
| Gallons per Day . . . . .  | U                 |
| Liters . . . . .           | L                 |

| Unit of Measure                 | Code <sup>1</sup> |
|---------------------------------|-------------------|
| Liters per Hour . . . . .       | H                 |
| Liters per Day . . . . .        | V                 |
| Short tons (2000 lbs) . . . . . | T                 |
| Short Tons per Hour . . . . .   | D                 |
| Metric Tons per Hour . . . . .  | W                 |
| Short Tons per Day . . . . .    | N                 |
| Metric Tons per Day . . . . .   | S                 |
| Pounds . . . . .                | P                 |
| Pounds per Hour . . . . .       | J                 |
| Kilograms . . . . .             | K                 |
| Kilograms per Hour . . . . .    | R                 |
| Cubic yards . . . . .           | Y                 |
| Cubic meters . . . . .          | C                 |
| Acres . . . . .                 | B                 |
| Acres-feet . . . . .            | A                 |
| Hectares . . . . .              | Q                 |
| Hectare-meter . . . . .         | F                 |
| Btus per Hour . . . . .         | I                 |
| Tons (2000 lbs) . . . . .       | M                 |

Footnote: <sup>1</sup>Single-digit symbols are used here for data processing purposes.

(d) The method(s) (by handling code(s)) of management for each dangerous waste received or managed, and the date(s) of treatment, recycling, storage, or disposal must be recorded, using the handling code(s) specified in Table 2, below.

Table 2  
Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of dangerous waste received.

1. Storage
  - S01 Container (barrel, drum, etc.)
  - S02 Tank
  - S03 Waste pile
  - S04 Surface impoundment
  - S05 Drip Pad
  - S06 Containment Building (Storage)
  - S99 Other storage (specify)
2. Treatment
  - (a) Thermal Treatment
    - T06 Liquid injection incinerator
    - T07 Rotary kiln incinerator
    - T08 Fluidized bed incinerator
    - T09 Multiple hearth incinerator
    - T10 Infrared furnace incinerator
    - T11 Molten salt destructor
    - T12 Pyrolysis

- T13 Wet air oxidation
  - T14 Calcination
  - T15 Microwave discharge
  - T18 Other (specify)
  - (b) Chemical treatment
    - T19 Absorption mound
    - T20 Absorption field
    - T21 Chemical fixation
    - T22 Chemical oxidation
    - T23 Chemical precipitation
    - T24 Chemical reduction
    - T25 Chlorination
    - T26 Chlorinolysis
    - T27 Cyanide destruction
    - T28 Degradation
    - T29 Detoxification
    - T30 Ion exchange
    - T31 Neutralization
    - T32 Ozonation
    - T33 Photolysis
    - T34 Other (specify)
  - (c) Physical treatment
    - (i) Separation of components
      - T35 Centrifugation
      - T36 Clarification
      - T37 Coagulation
      - T38 Decanting
      - T39 Encapsulation
      - T40 Filtration
      - T41 Flocculation
      - T42 Flotation
      - T43 Foaming
      - T44 Sedimentation
      - T45 Thickening
      - T46 Ultrafiltration
      - T47 Other (specify)
    - (ii) Removal of specific components
      - T48 Absorption-molecular sieve
      - T49 Activated carbon
      - T50 Blending
      - T51 Catalysis
      - T52 Crystallization
      - T53 Dialysis
      - T54 Distillation
      - T55 Electrodialysis
      - T56 Electrolysis
      - T57 Evaporation
      - T58 High gradient magnetic separation
      - T59 Leaching
      - T60 Liquid ion exchange
      - T61 Liquid-liquid extraction
      - T62 Reverse osmosis
      - T63 Solvent recovery
      - T64 Stripping
      - T65 Sand filter
      - T66 Other (specify)
  - (d) Biological treatment
    - T67 Activated sludge
    - T68 Aerobic lagoon
    - T69 Aerobic tank
    - T70 Anaerobic tank
    - T71 Composting
    - T72 Septic tank
    - T73 Spray irrigation
    - T74 Thickening filter
    - T75 Trickling filter
    - T76 Waste stabilization pond
    - T77 Other (specify)
    - T78-79 (Reserved)
    - (e) Boilers and industrial furnaces
      - T80 Boiler
      - T81 Cement kiln
      - T82 Lime kiln
      - T83 Aggregate kiln
      - T84 Phosphate kiln
      - T85 Coke oven
      - T86 Blast furnace
      - T87 Smelting, melting, or refining furnace
      - T88 Titanium dioxide chloride process oxidation reactor
      - T89 Methane reforming furnace
      - T90 Pulping liquor recovery furnace
      - T91 Combustion device used in the recovery of sulfur values from spent sulfuric acid
      - T92 Halogen acid furnaces
      - T93 Other industrial furnaces listed in WAC 173-303-040 (specify)
    - (f) Other treatment
      - T94 Containment building (treatment)
  - 3. Disposal
    - D79 Underground injection
    - D80 Landfill
    - D81 Land treatment
    - D82 Ocean disposal
    - D83 Surface impoundment (to be closed as a landfill)
    - D99 Other disposal (specify)
  - 4. Miscellaneous (Subpart X)
    - X01 Open burning/open detonation
    - X02 Mechanical processing
    - X03 Thermal unit
    - X04 Geologic repository
    - X99 Other Subpart X (specify)
- (3) Availability, retention and disposition of records.
- (a) All facility records, including plans, required by this chapter must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of the department who is designated by the director.
- (b) The retention period for all facility records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the director.
- (c) A copy of records of waste disposal locations and quantities under this section must be submitted to the United States EPA regional administrator, the department, and the local land use and planning authority upon closure of the facility.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

**WAC 173-303-395 Other general requirements.** (1) Precautions for ignitable, reactive, or incompatible wastes.

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of this chapter 173-303 WAC, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

- (i) Generate extreme heat or pressure, fire or explosion, or violent reaction;
- (ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;
- (iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
- (iv) Damage the structural integrity of the facility or device containing the waste; or
- (v) Through other like means, threaten human health or the environment.

(c) When required to comply with (a) and (b) of this subsection, the owner or operator must document that compliance in the operating record required under WAC 173-303-380(1). This documentation may be based on references to published scientific or engineering literature, data from trial tests, waste analyses, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

(d) At least yearly, the owner or operator must inspect those areas of ~~(his)~~ their facility where ignitable or reactive wastes are stored. This inspection must be performed in the presence of a professional person who is familiar with the International Fire Code, or in the presence of the local, state, or federal fire marshal. The owner or operator must enter the following information in ~~(his)~~ their inspection log or operating record as a result of this inspection:

- (i) The date and time of the inspection;
- (ii) The name of the professional inspector or fire marshal;
- (iii) A notation of the observations made; and
- (iv) Any remedial actions which were taken as a result of the inspection.

(2) Compliance with other environmental protection laws and regulations. In receiving, storing, handling, treating, processing, or disposing of dangerous wastes, the owner/operator must design, maintain and operate ~~(his)~~ their dangerous waste facility in compliance with all applicable federal, state and local laws and regulations (e.g., control of

stormwater or sanitary water discharge, control of volatile air emissions, etc.).

(3) ~~(Reserve.)~~ (Reserved.)

(4) Loading and unloading areas. TSD facilities which receive or ship manifested shipments of liquid dangerous waste for treatment, storage or disposal must provide for and use an area (or areas) for loading and unloading waste shipments. The loading and unloading area(s) must be designed, constructed, operated and maintained to:

- (a) Contain spills and leaks that might occur during loading or unloading;
- (b) Prevent release of dangerous waste or dangerous waste constituents to ground or surface waters;
- (c) Contain wash waters (if any) resulting from the cleaning of contaminated transport vehicles and load/unload equipment; and
- (d) Allow for removal, as soon as possible, of collected wastes resulting from spills, leaks and equipment cleaning (if any) in a manner which assures compliance with (b) of this subsection.

(5) Storage time limit for impoundments and piles.

(a) Except as provided in (b) or (c) of this subsection, dangerous waste may not be stored in a surface impoundment or waste pile for more than five years after the waste was first placed in the impoundment or pile. For the purposes of this requirement, the five-year limit, for waste regulated under this chapter and being stored in impoundments or piles on the effective date of this requirement, will begin on August 1, 1984. The age of stored wastes must be determined on a monthly basis.

The owner/operator of a surface impoundment or waste pile used for storing dangerous waste must develop a written plan, to be kept at the facility, for complying with the five-year storage limit. The plan must describe the operating conditions, waste identification procedures (for keeping track of the age of the wastes), and a waste removal schedule, and at a minimum the plan must include the following elements:

- (i) Methods for identifying the age of dangerous wastes placed in the impoundment or pile;
- (ii) Where practical, procedures for segregating wastes of different ages. If the wastes cannot be practically segregated, then the age of all wastes placed in the impoundment or pile must be deemed the same age as the oldest waste in the impoundment or pile;
- (iii) A schedule for removing dangerous waste from the impoundment or pile, or for disposing of them in a timely manner to assure compliance with the five-year limit;
- (iv) A description of the actions to be taken according to the schedule required by (a)(iii) of this subsection;
- (v) Procedures for noting in the operating record required by WAC 173-303-380(1) that the requirements of this subsection have been satisfied; and
- (vi) Such other requirements as the department specifies.

(b) If the owner/operator of a surface impoundment or waste pile can develop a written plan and schedule for developing and implementing a recycling or treatment process for the wastes stored in ~~(his)~~ their impoundment or pile, then the department may grant an extension to the storage time limit required in (a) of this subsection. Such extension will be granted only once, will only apply to those dangerous wastes

covered by the recycling or treatment plan and which are less than five years old on the date that the plan is approved by the department, and will not exceed five years: Provided, That on a case-by-case basis the department may grant an extension of longer than five years, but in no case will any extension be granted for longer than ten years, if the owner/operator of the impoundment or pile can demonstrate to the department's satisfaction that an extension of more than five years will not pose a threat to public health or the environment, and is necessary because: Other treatment or recycling options of shorter durations are not available; the treatment or recycling plan developed by the owner/operator cannot be implemented within five years due to technological circumstances; or, such other reasons as are determined acceptable by the department. Until the department grants the extension by approving the recycling or treatment plan, the owner/operator must continue to comply with the requirements of (a) of this subsection. The recycling or treatment plan and schedule, at a minimum, must:

(i) Specify the wastes which will be recycled or treated in accordance with the plan;

(ii) Describe in detail the recycling or treatment which the owner/operator intends to perform. If the recycling or treatment will involve physical changes to the owner's/operator's facility, the plan must include descriptions of all necessary equipment, processes to be used, site plans, and maps to show any new structures, pipes, channels, waste handling areas, roads, etc.;

(iii) Discuss any permit actions (including issuance or modification) necessary under this chapter, and any other permits which will be required under other federal, state or local laws;

(iv) Establish a schedule for complying with the plan. The schedule must, at a minimum, cover:

(A) The rate at which wastes will be recycled or treated in order to comply with the extension granted by the department;

(B) Construction and equipment installation times as appropriate;

(C) Timing for complying with all required permit actions; and

(D) Such other elements as the department might require;

(v) Describe how the owner/operator will continue to comply with the requirements of (a) of this subsection for all wastes not specified in (b)(i) of this subsection;

(vi) Identify any future occurrences or situations which the owner/operator could reasonably expect to occur and which might cause ~~((him))~~ them to fail to comply with ~~((his))~~ their recycling or treatment plan. The owner/operator must also describe what actions ~~((he))~~ they would take in the event that such occurrences or situations happen;

(vii) Be approved by the department. The plan may not be implemented until it is approved by the department including, if necessary, issuance or modification of a facility permit as required by this chapter. Any extension granted by the department will begin on the date that the plan is approved, or the date five years after the effective date of this subsection, whichever is later; and

(viii) Include any other elements that the department might require.

(c) The owner/operator of a surface impoundment or waste pile is exempted from the requirements of (a) and (b) of this subsection if:

(i) The owner/operator of a surface impoundment or waste pile can demonstrate to the department's satisfaction that the impoundment or pile is not used primarily for storage, but that it is primarily used to actively and effectively neutralize, detoxify, or otherwise treat dangerous waste; or

(ii) The owner/operator of a surface impoundment or waste pile can demonstrate to the department's satisfaction that dangerous waste is removed on a frequent basis (at least four times a year) for treatment, recycling or disposal, provided that the amount of waste removed during any five-year period must equal or exceed the amount of waste placed in the impoundment or pile during that five-year period. However, this exemption does not apply to waste removal which is being performed pursuant to a recycling or treatment plan developed and approved under (b) of this subsection; or

(iii) The owner/operator of a surface impoundment or waste pile has demonstrated, through ~~((his))~~ their permit, closure plan or other instrument, that the impoundment or pile is being operated as a land disposal unit and that it will be closed as a landfill.

(6) Labeling for containers and tanks. The owner or operator must label containers and tanks in a manner which adequately identifies the major ~~((risk(s)))~~ hazard(s) associated with the contents for employees, emergency response personnel and the public ~~((Note—If there is already a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate)))~~. The owner or operator must ensure that labels are not obscured, removed, or otherwise unreadable in the course of inspection required under WAC 173-303-320. For tanks, the label or sign must be legible at a distance of at least fifty feet. For containers, the owner or operator must affix labels upon transfer of dangerous waste from one container to another. The owner or operator must destroy or otherwise remove labels from the emptied container, unless the container will continue to be used for storing dangerous waste at the facility.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-400 Interim status facility standards.**

(1) Purpose. The purpose of WAC 173-303-400 is to establish standards which define the acceptable management of dangerous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(2) Applicability.

(a) Except as provided in 40 C.F.R. 265.1080(b), the interim status standards apply to owners and operators of facilities that treat, store, transfer, and/or dispose of dangerous waste. For purposes of this section, interim status applies to all facilities that comply fully with the requirements for interim status under Section 3005(e) of the Federal Resource

Conservation and Recovery Act or WAC 173-303-805. The interim status standards also apply to those owners and operators of facilities in existence on November 19, 1980, for RCRA wastes and those facilities in existence on August 9, 1982, for state only wastes who have failed to provide the required notification pursuant to WAC 173-303-060 or failed to file Part A of the permit application pursuant to WAC 173-303-805 (4) and (5). Interim status will end after final administrative disposition of the Part B permit application is completed, or may be terminated for the causes described in WAC 173-303-805(8).

(b) Interim status facilities must meet the interim status standards by November 19, 1980, except that:

(i) Interim status facilities which handle only state designated wastes (that is, not designated by 40 C.F.R. Part 261) must meet the interim status standards by August 9, 1982; and

(ii) Interim status facilities must comply with the additional state interim status requirements specified in subsection (3)(c)(ii), (iii) and (v), of this section, by August 9, 1982.

(c) The requirements of the interim status standards do not apply to:

(i) Persons disposing of dangerous waste subject to a permit issued under the Marine Protection, Research and Sanctuaries Act;

(ii) The owner or operator of a facility managing recyclable materials described in WAC 173-303-120 (2), (3), and (5) (except to the extent that they are referred to in WAC 173-303-515 or 173-303-505, 173-303-520, 173-303-525, or 40 C.F.R. Part 266, Subpart H);

(iii) The owner or operator of a POTW who treats, stores, or disposes of dangerous wastes, provided that (~~he has~~) they have a permit by rule pursuant to the requirements of WAC 173-303-802(4);

(iv) The owner or operator of a totally enclosed treatment facility or elementary neutralization or wastewater treatment units as defined in WAC 173-303-040, provided that (~~he has~~) they have a permit by rule pursuant to the requirements of WAC 173-303-802(5);

(v) Generators accumulating waste (~~for less than ninety days except to the extent WAC 173-303-200 provides otherwise~~) on site in compliance with applicable conditions of WAC 173-303-171, 173-303-172, 173-303-174, 173-303-200 and 173-303-201;

(vi) The addition, by a generator, of absorbent material to waste in a container, or of waste to absorbent material in a container, provided that these actions occur at the time the waste is first placed in containers or, in the case of repackaging of previously containerized waste into new containers, at the time the waste is first placed into the new containers and the generator complies with WAC 173-303-200 (~~(+)(b))~~) and 173-303-201 for large quantity generators or WAC 173-303-172 for medium quantity generators, and 173-303-395 (1)(a) and (b);

(vii) The compaction or sorting, by a generator, of miscellaneous waste forms such as cans, rags, and bottles in a container, so long as the activity is solely for the purpose of reducing waste void space, and so long as these activities are conducted in a manner that protects human health and prevents any release to the environment and the generator com-

plies with WAC 173-303-200 (~~(+)(b))~~) and 173-303-201 for large quantity generators or WAC 173-303-172 for medium quantity generators and WAC 173-303-395 (1)(a) and (b);

(viii) Generators treating dangerous waste on-site in tanks, containers, or containment buildings that are used for accumulation of such wastes provided the generator complies with (~~the~~) WAC 173-303-170(~~(+))~~) (2)(b);

(ix) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in WAC 173-303-040, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 C.F.R. section 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in WAC 173-303-395 (1)(a); and

(x) Any person, other than an owner or operator who is already subject to the final facility standards, who is carrying out an immediate or emergency response to contain or treat a discharge or potential discharge of a dangerous waste or hazardous substance.

(xi) Universal waste handlers and universal waste transporters (as defined in WAC 173-303-040) handling the wastes listed below. These handlers are subject to regulation under WAC 173-303-573, when handling the below listed universal wastes.

(A) Batteries as described in WAC 173-303-573(2);

(B) Mercury-containing equipment as described in WAC 173-303-573(3); and

(C) Lamps as described in WAC 173-303-573(5).

(xii) WAC 173-303-578 identifies when the requirements of this section apply to the storage of military munitions classified as solid waste under WAC 173-303-578(2). The treatment and disposal of dangerous waste military munitions are subject to the applicable permitting, procedural, and technical standards in this chapter.

(xiii)(A) Except as provided in (c)(xiii)(B) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(I) A discharge of a dangerous waste;

(II) An imminent and substantial threat of a discharge of dangerous waste;

(III) A discharge of a material that, when discharged, becomes a dangerous waste;

(IV) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in WAC 173-303-040.

(B) An owner or operator of a facility otherwise regulated by WAC 173-303-600 must comply with all applicable requirements of WAC 173-303-340 and 173-303-350.

(C) Any person who is covered by (c)(xiii)(A) of this section and who continues or initiates dangerous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(D) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of ~~((his or her))~~ their official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA/state identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(xiv) The owner or operator of a facility that is permitted to manage solid waste pursuant to chapter 173-350 WAC, if the only dangerous waste the facility manages is excluded from regulation under this chapter by WAC ~~((173-303-070(8)))~~ 173-303-171.

(xv) A farmer disposing of waste pesticides from ~~((his))~~ their own use provided ~~((he complies))~~ they comply with WAC 173-303-160 (2)(b).

(3) Standards.

(a) Interim status standards are the standards set forth by the Environmental Protection Agency in 40 C.F.R. Part 265 Section 265.19 of Subpart B, Subparts F through R, Subpart W, Subparts AA, BB, CC (including references to 40 C.F.R. Parts 60, 61, and 63), DD, EE, and Appendix VI, which are incorporated by reference into this regulation (including, by reference, any EPA requirements specified in those subparts which are not otherwise explicitly described in this chapter), and:

(i) The land disposal restrictions of WAC 173-303-140; the facility requirements of WAC 173-303-280 through 173-303-440 except WAC 173-303-335; and the corrective action requirements of WAC 173-303-646;

(ii) WAC 173-303-630(3), for containers. In addition, for container storage, the department may require that the storage area include secondary containment in accordance with WAC 173-303-630(7), if the department determines that there is a potential threat to public health or the environment due to the nature of the wastes being stored, or due to a history of spills or releases from stored containers. Any new container storage areas constructed or installed after September 30, 1986, must comply with the provisions of WAC 173-303-630(7)((-));

(iii) WAC 173-303-640 (5)(d), for tanks; ~~((and))~~

(iv) WAC 173-303-805;

(v) WAC 173-303-060;

(vi) WAC 173-303-320; and

(vii) WAC 173-303-370.

(b) For purposes of applying the interim status standards of 40 C.F.R. Part 265 Subparts F through R, Subpart W, and Subparts AA, BB, CC, DD, and EE to the state of Washington facilities, the federal terms have (and in the case of the wording used in the financial instruments referenced in Subpart H of Part 265, must be replaced with) the following state of Washington meanings:

(i) "Regional administrator" means the "department" except for 40 C.F.R. Parts 270.2; 270.3; 270.5; 270.10 (e)(1), (2) and (4); 270.10 (f) and (g); 270.11 (a)(3); 270.14 (b)(20); 270.32 (b)(2); and 270.51;

(ii) "Hazardous" means "dangerous" except for Subparts AA, BB, CC, and DD. These subparts apply only to hazardous waste as defined in WAC 173-303-040;

(iii) "Compliance procedure" has the meaning set forth in WAC 173-303-040, Definitions;

(iv) "EPA hazardous waste numbers" mean "dangerous waste numbers((-)";

(v) "At least weekly, owners and operators must inspect" means "weekly inspections" as defined in WAC 173-303-040.

(c) In addition to the changes described in (b) of this subsection, the following modifications are made to interim status standards of 40 C.F.R. Part 265 Subparts F through R, Subpart W, and Subparts AA, BB, CC, DD, and EE:

(i) The words "the effective date of these regulations" means:

(A) November 19, 1980, for facilities which manage any wastes designated by 40 C.F.R. Part 261;

(B) For wastes which become designated by 40 C.F.R. Part 261 subsequent to November 19, 1980, the effective date is the date on which the wastes become regulated;

(C) March 12, 1982, for facilities which manage wastes designated only by WAC 173-303-080 through 173-303-100 and not designated by 40 C.F.R. Part 261;

(D) For wastes which become designated only by WAC 173-303-080 through 173-303-100 and not designated by 40 C.F.R. Part 261 subsequent to March 12, 1982, the effective date is the date on which the wastes become regulated.

(ii) The following sections and any cross-reference to these sections are not incorporated or adopted by reference:

(A) 40 C.F.R. Parts 260.1 (b)(4)-(6) and 260.20-22.

(B) 40 C.F.R. Parts 264.1 (d) and (f); 265.1 (c)(4); 264.149-150 and 265.149-150; 264.301(k); and 265.430.

(C) 40 C.F.R. Parts 268.5 and 6; 268 Subpart B; 268.42(b); and 268.44 (a) through (g).

(D) 40 C.F.R. Parts 270.1 (c)(1)(i); 270.60(b); and 270.64.

(E) 40 C.F.R. Parts 124.1 (b)-(e); 124.4; 124.5(e); 124.9; 124.10 (a)(1)(iv); 124.12(e); 124.14(d); 124.15 (b)(2); 124.16; 124.17(b); 124.18; 124.19; and 124.21.

(F) 40 C.F.R. Parts 2.106(b); 2.202(b); 2.205(i); 2.209 (b)-(c); 2.212-213; and 2.301-311.

(G) 40 C.F.R. 265.1080 (e) and (f).

(iii) Where 40 C.F.R. 265 Subparts F through R, W, DD, and EE have been incorporated by reference refer to 40 C.F.R. 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110.

(iv) "Subpart B - general facility standards." References to "EPA" in 40 C.F.R. 265.19, means the "department." Additionally, references to "administrator" means the "director."

(v) "Subpart F - groundwater monitoring."

(A) Section 265.90 (d)(1) is modified by adding the following sentence. "A copy of the plan must be submitted to the department,"

(B) Section 265.90 (d)(3) is modified by adding the following sentence. "A copy of the plan must be submitted to the department,"

(C) Section 265.91(c) includes the requirement that: "Groundwater monitoring wells must be designed, constructed, and operated so as to prevent groundwater contamination. Chapter 173-160 WAC may be used as guidance in the installation of wells",

(D) Section 265.93 (d)(2) is modified by adding the following sentence. "A copy of the plan must be submitted to the department," and

(E) Section 265.93 (d)(5) is modified by adding the following sentence. "A copy of the report must be submitted to the department within 15 days."

(vi) "Subpart G - closure and post-closure."

(A) The third sentence in section 265.112 (d)(1) is modified to read "The owner or operator must submit the closure plan to the department at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with only such units."

(B) The sixth sentence of section 265.112 (d)(1) is modified to read "Owners or operators with approved closure plans must notify the department in writing at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with only such units." The first sentence of section 265.115 is modified to read "Within 60 days of completion of closure of each dangerous waste management unit (including tank systems and container storage areas) and within 60 days of completion of final closure, the owner or operator must submit to the department, by registered mail or other means that establish proof of receipt (including appropriate electronic means), a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan." In addition, the cleanup levels for removal or decontamination set forth at WAC 173-303-610 (2)(b) apply.

(C) Section 265.113 (e)(5) is modified by changing "annual reports" to "semi-annual reports."

(D) Section 265.115 is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.120 is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(vii) "Subpart H - financial requirements."

(A) An additional sentence that reads: "Any owner or operator who can provide financial assurances and instruments which satisfy the requirements of WAC 173-303-620 will be deemed to be in compliance with 40 C.F.R. Part 265 Subpart H."

(B) In 40 C.F.R. Parts 265.143(g) and 265.145(g) the following sentence does not apply to the state: "If the facilities covered by the mechanisms are in more than one Region, identical evidence of financial assurance must be submitted to, and maintained with the Regional Administrators of all such Regions." Instead, the following sentence applies: "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be sub-

mitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state."

(C) Section 265.143(h) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.145(h) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.147(e) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) The following sections and any cross-reference to these sections are not incorporated by reference: 40 C.F.R. Parts 265.149 and 265.150;

(viii) "Subpart I use and management of containers."

Section 265.174 is modified by replacing the paragraph with the following. "The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors."

(ix) "Subpart J - tank systems."

(A) Section 265.191(a) is modified so that the date by which an assessment of a tank system's integrity must be completed is January 12, 1990.

(B) Section 265.191(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(C) Section 265.191 (b)(5)(ii) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.192(a) introductory text is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.192(b) introductory text is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) Section 265.193(a) is modified so that the dates by which secondary containment (which meets the requirements of that section) must be provided are the same as the dates in WAC 173-303-640 (4)(a).

(G) Section 265.193 (i)(2) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(H) Section 265.195(b) is modified by deleting the words "Except as noted under the paragraph (c) of this section."

(I) Section 265.195 is modified by deleting paragraphs (c) and (d).

(J) Section 265.196(f) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer" and by adding the following sentence. "A copy of the plan must be submitted to the department within seven days after returning the tank system to use."

(K) Section 265.201(c) is modified by deleting the words "Except as noted in paragraph (d) of this section."

(L) Section 265.201 is modified by deleting paragraphs (d) and (e).

(x) "Subpart K surface impoundments." Section 265.224(a) is modified by adding the following sentence. "A copy of the plan must be submitted to the department when submitting the proposed action leakage rate under section 265.222."

(xi) "Subpart L waste piles." Section 265.259(a) is modified by adding the following sentence. "A copy of the response action plan must be submitted to the department when submitting the proposed action leakage rate under section 265.255."

(xii) "Subpart M land treatment."

(A) Section 265.273(b) is modified by replacing the words "Part 261, Subpart D of this chapter" with "WAC 173-303-080";

(B) Section 265.280(e) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(xiii) "Subpart N - landfills."

(A) An additional sentence reads: "An owner/operator must not landfill an organic/carbonaceous waste or an EHW, as defined by WAC 173-303-080 through 173-303-100, except at the EHW facility at Hanford" as allowed under WAC 173-303-700 or as allowed under WAC 173-303-140(4).

(B) Section 265.303(a). "A copy of the response action plan must be submitted to the department when submitting the proposed action leakage rate under section 265.302."

(xiv) "Subpart O incinerators."

(xv) "Subpart P thermal treatment."

(xvi) "Subpart Q chemical, physical and biological treatment."

(xvii) "Subpart R - underground injection." An additional sentence reads: "Owners and operators of wells are prohibited from disposing of EHW or an organic carcinogen designated under WAC 173-303-080 through 173-303-100."

(xviii) "Subpart W drip pads."

(A) Section 265.441(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(B) Section 265.441(b) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(C) Section 265.441(c) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.443 (a)(4)(ii) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.443(g) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) 265.444(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(xix) "Subpart AA air emission standards for process vents."

(xx) "Subpart BB air emission standards for equipment leaks."

(A) Section 265.1061 is modified by adding (d) "If an owner or operator decides no longer to comply with this sec-

tion, the owner or operator must notify the department in writing that the work practice standard described in 265.1057 (a) through (e) will be followed."

(B) Section 265.1061(b) is modified by adding (b)(3) "An owner or operator must notify the department that the owner or operator has elected to comply with the requirements of this section."

(C) Section 265.1062(a) is modified by adding the sentence "An owner or operator must notify the department before implementing one of the alternative work practices."

(xxi) "Subpart CC air emission standards for tanks, surface impoundments, and containers."

(xxii) "Subpart DD containment buildings."

(A) Section 265.1101 (c)(2) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(B) Section 265.1101 (c)(3)(iii) is modified by changing "qualified registered professional engineer" to "independent qualified registered professional engineer."

(xxiii) "Subpart EE - hazardous waste munitions and explosives storage."

The first sentence at 40 C.F.R. 265.1202 is modified to exclude the exception for hazardous wastes managed under 261.3(d).

(4) The requirements of this section apply to owners or operators of all facilities that treat, store or dispose of hazardous waste referred to in 40 C.F.R. Part 268, and the 40 C.F.R. Part 268 standards are considered material conditions or requirements of the interim status standards incorporated by reference in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-505 Special requirements for recyclable materials used in a manner constituting disposal.** (1) Applicability. (Also, see WAC 173-303-120(3).)

(a) This section applies to recyclable materials that are applied to or placed on the land:

(i) Without mixing with any other substance(s); or

(ii) After mixing or combining with any other substance(s). These materials will be referred to as "materials used in a manner that constitutes disposal."

(b)(i) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 C.F.R. Part 268 Subpart D (or applicable prohibition levels in 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with 40 C.F.R. 268.7 (b)(6) as modified in WAC 173-303-140 (2)(e).

(ii) Antiskid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of dangerous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in (b)(i) of this subsection and remain subject to regulation.

(iii) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(A) They are zinc fertilizers excluded according to WAC 173-303-071 (3)(pp); or

(B) They meet the applicable treatment standards in subpart D of Part 268, which is incorporated by reference at WAC 173-303-140 (2)(a) for each hazardous waste that they contain.

(Note: Fertilizers that contain recyclable material derived from state-only waste must also meet the treatment standards in WAC 173-303-140 (2)(a) that apply to the characteristics of dangerous waste that the state-only waste exhibits.)

(iv) The department may recommend registration under chapter 15.54 RCW for a waste-derived fertilizer (including fertilizers that contain recyclable material) or micronutrient fertilizer: Provided, That the registrant submits the information described in (b)(iv)(A) or (B) of this subsection. However, the information requirements in (b)(iv)(A) of this subsection may not be required if: The registrant provides documentation that the fertilizer has been previously registered in Washington state two or more times using the information in (b)(iv)(A) of this subsection, and the source materials used to manufacture the product have not changed.

(A) Initial criteria.

(I) The applicable Land Disposal Restriction (LDR) Certification as described in 40 C.F.R. Part 268, or toxicity characteristic leaching procedure (TCLP) data that indicate the product contains less than the maximum concentrations for TCLP metals described in WAC 173-303-090(8); and

(II) Total Halogenated Organic Compounds (HOC) test data that indicate the product contains less than 1% total HOC.

(B) Secondary criteria.

(I) A complete description of the fertilizer manufacturing process, including the location of the manufacturing facility; and

(II) A complete list of all ingredients used in manufacturing the fertilizer and a complete description of the sources of those ingredients, including a description of the original process and location for each of those ingredients; and

(III) Evidence that any waste(s) used in manufacturing the product does not designate as dangerous waste according to procedures described in WAC 173-303-070; and

(IV) Other information as required by the department.

(2) Recyclable materials used in a manner that constitutes disposal are dangerous wastes and are subject to the following requirements:

(a) For generators, WAC 173-303-170 through 173-303-230;

(b) For transporters, WAC 173-303-240 through 173-303-270; and

(c) For facilities that store or use dangerous wastes in a manner constituting disposal, the applicable requirements of 40 C.F.R. Part 268 (incorporated by reference in WAC 173-303-140 (2)(a)) and 173-303-280 through 173-303-840 (except that users of such products are not subject to these standards if the products meet the requirements of subsection (1)(b) of this section).

(d) The use of waste oil, used oil, or other material that is contaminated with dioxin or any other dangerous waste for dust suppression or road treatment is prohibited.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-510 Special requirements for dangerous wastes burned for energy recovery.** (1) Applicability. (Also, see WAC 173-303-120(3).)

(a) This section applies to generators, marketers, transporters, blenders, and burners of dangerous waste fuels that are to be burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of 40 C.F.R. Part 265 or WAC 173-303-670, except as provided by (b) of this subsection. These regulations do not apply to gas recovered from dangerous waste management activities when such gas is burned for energy recovery. Note: (This note is a reminder that all generators, transporters, and burners of federally regulated hazardous waste fuels that are to be burned for energy recovery, and all storage facility owners and operators of facilities that store dangerous waste that is burned in a boiler or industrial furnace must comply with the requirements of 40 C.F.R. Part 266 Subpart H.) In addition, the following are incorporated by reference for boilers and industrial furnaces that burn hazardous waste: 40 C.F.R. 266.100 (b)(1), 266.100 (b)(2), 266.100 (b)(3), 266.100 (d)(1), 266.100 (d)(3) intro, and 266.100(h)(3).

(b) The following dangerous wastes are not subject to regulation under this section:

(i) Used oil burned for energy recovery if it is a dangerous waste because it:

(A) Exhibits a characteristic of dangerous waste identified in WAC 173-303-090; or

(B) Is designated as DW only (and not EHW) through the criteria of WAC 173-303-100.

Such used oil is subject to regulation under WAC 173-303-515 rather than this section.

Note: Used oil burned for energy recovery containing a listed waste or a waste designated as EHW through the criteria of WAC 173-303-100 (6)(b) and (c) is subject to this section.

(ii) (Reserved.)

(2) Definitions. Any terms used in this section that are not defined below have the meanings provided in WAC 173-303-040. For the purposes of this section, the following terms have the described meanings:

(a) "Dangerous waste fuel" means dangerous waste burned or to be burned for energy recovery. Fuel produced from dangerous waste by processing, blending, or other treatment is also dangerous waste fuel.

(b) "Distributor" means persons who distribute but do not process or blend dangerous waste fuel. Distributors may broker fuel by arranging for the final disposition of the fuel. Distributors are regulated under subsection (6) of this section.

(c) "Blender" means persons who produce, process, or blend fuel from dangerous wastes. Blenders are regulated under subsection (7) of this section.

(d) "Marketer" means persons who are:

(i) Generators who market dangerous waste fuel directly to a burner. Generators are regulated under subsection (4) of this section;

(ii) Distributors, regulated under subsection (6) of this section;

(iii) Blenders, regulated under subsection (7) of this section.

(3) Prohibitions.

(a) A person may market dangerous waste fuel only:

(i) To persons, in state, who have notified the department of their dangerous waste fuel activities under WAC 173-303-060 and have an EPA/state identification number or to out-of-state marketers or burners who have notified the EPA or authorized state agency and who have an EPA/state identification number; and

(ii) When marketed to a burner, to persons who burn the fuel in boilers or industrial furnaces identified in (b) of this subsection.

(b) Dangerous waste fuel may be burned for energy recovery in the following devices only;

(i) Industrial furnaces identified in WAC 173-303-040;

(ii) Boilers, as defined in WAC 173-303-040, that are identified as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

(c) No fuel which contains any dangerous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.

(4) Standards applicable to generators of dangerous waste fuel.

(a) All generators of dangerous waste that is used as a fuel or used to produce a fuel are subject to WAC 173-303-170 through 173-303-230.

(b) Generators who are marketers. Generators are marketers if they send their waste fuel directly to a burner. Generators who are marketers must:

(i) Prohibitions. Comply with the prohibitions under subsection (3) of this subsection.

(ii) Notification. Comply with the notification requirements under WAC 173-303-060 for dangerous waste fuel activities. Generators who have previously notified the department of their dangerous waste management activities and obtained an EPA/state identification number, must renotify to identify their dangerous waste fuel activities.

(iii) Accumulation. Comply with applicable accumulation requirements of WAC ((~~173-303-200 or~~) 173-303-172, 173-303-200, and 173-303-201.

(iv) Storage. For generators who have interim or final status and exceed the accumulation time frames referenced in (b)(iii) of this subsection, comply with the storage provisions of:

(A) WAC 173-303-280 through 173-303-395; and

(B) WAC 173-303-800 through 173-303-840; and

(C) WAC 173-303-400 for interim status facilities or WAC 173-303-600 through 173-303-692 for final status facilities.

(v) Required notice. Obtain, prior to initiating the first shipment of dangerous waste fuel, a one time written and signed certification notice from the burner certifying that:

(A) The burner has notified as described under subsection (3) of this subsection; and

(B) The burner will burn the dangerous waste fuel only in an industrial furnace or boiler identified in subsection (3)(b) of this subsection.

(vi) Recordkeeping. Keep a copy of each certification notice received for at least five years from the date of the last dangerous waste fuel shipment to the burner who sent such notice.

(c) Generators who are burners also are subject to subsection (8) of this section.

(5) Standards applicable to transporters of dangerous waste fuel. Transporters of dangerous waste fuel (and dangerous waste that is used to produce a fuel) are subject to the requirements of WAC 173-303-240 through 173-303-270.

(6) Standards applicable to distributors of dangerous waste fuel.

(a) Prohibitions. The prohibitions under subsection (3) of this section;

(b) Notification. Notification requirements under WAC 173-303-060 for dangerous waste fuel activities. Distributors who have previously notified the department of their dangerous waste management activities and obtained an EPA/state identification number, must renotify to identify their dangerous waste fuel activities.

(c) Storage. Distributors who store dangerous waste fuels must comply with the applicable storage provisions of:

(i) WAC 173-303-280 through 173-303-395; and

(ii) WAC 173-303-800 through 173-303-840; and

(iii) WAC 173-303-400 for interim status facilities or WAC 173-303-600 through 173-303-692 for final status facilities;

(iv) The standards for generators in WAC 173-303-170 through 173-303-230.

(d) Off-site shipment. A distributor must meet the standards for generators in WAC 173-303-170 through 173-303-230 when the distributor initiates a shipment of dangerous waste fuel. Except that a distributor may not accumulate dangerous waste fuels under the accumulation provisions of WAC ((~~173-303-200 or~~) 173-303-172, 173-303-200, and 173-303-201;

(e) Required notices.

(i) Before initiating the first shipment of dangerous waste fuel to another distributor, a blender, or a burner, a distributor must obtain a one-time written and signed certification notice from the distributor, blender, or burner certifying that:

(A) The burner, distributor, or blender has notified as described under subsection (3) of this section; and

(B) If the recipient is a burner, the burner will burn the dangerous waste fuel only in an industrial furnace or boiler identified in subsection (3)(b) of this section.

(ii) Before accepting the first shipment of dangerous waste fuel from another distributor or blender, the distributor must provide the other distributor or blender with a one-time written and signed certification that the distributor has complied with the notification requirements described in subsection (3) of this section; and

(f) Recordkeeping. A distributor must keep a copy of each certification notice received or sent for at least five years from the date the distributor last engaged in a dangerous waste fuel marketing transaction with the person who sent or received the certification notice.

(7) Standards applicable to blenders of dangerous waste fuels.

(a) Prohibitions. The prohibitions under subsection (3) of this section.

(b) Notification. Notification requirements under WAC 173-303-060 for dangerous waste fuel activities. Blenders who have previously notified the department of their dangerous waste management activities and obtained an EPA/state identification number, must renotify to identify their dangerous waste fuel activities.

(c) Facility. For tanks, containers, or other units used to hold dangerous waste prior to blending or processing; for blending or processing tanks, containers, or other units; and for tanks, containers, or other units, used to hold blended or processed fuel, blenders must comply with the applicable provisions of:

(i) WAC 173-303-280 through 173-303-395; and

(ii) WAC 173-303-800 through 173-303-840; and

(iii) WAC 173-303-400 for interim status facilities or WAC 173-303-600 through 173-303-692 for final status facilities;

(d) Off-site shipment. The standards for generators in WAC 173-303-170 through 173-303-230 when a blender initiates a shipment of dangerous waste fuel, except that a blender may not accumulate dangerous waste fuels under the accumulation provisions of WAC (~~(173-303-200 or)~~) 173-303-172, 173-303-200, and 173-303-201;

(e) Required notices.

(i) Before initiating the first shipment of dangerous waste fuel to another blender, a distributor, or a burner, a blender must obtain a one-time written and signed certification notice from the blender, distributor, or burner certifying that:

(A) The burner, distributor, or blender has notified as described under subsection (3) of this section; and

(B) If the recipient is a burner, the burner will burn the dangerous waste fuel only in an industrial furnace or boiler identified in subsection (3)(b) of this section.

(ii) Before accepting the first shipment of dangerous waste fuel from another blender or distributor, the blender must provide the other blender or distributor with a one-time written and signed certification that the blender has complied with the notification requirements described in subsection (3) of this section; and

(f) Recordkeeping. A blender must keep a copy of each certification notice received or sent for at least five years from the date the blender last engaged in a dangerous waste fuel marketing transaction with the person who sent or received the certification notice.

(8) Standards applicable to burners of dangerous waste fuel.

Owners and operators of industrial furnaces and boilers identified in subsection (3)(b) of this section must comply with:

(a) Prohibitions. The prohibitions under subsection (3) of this section;

(b) Notification. Notification requirements under WAC 173-303-060 for dangerous waste fuel activities. A burner who has previously notified the department of dangerous waste management activities and obtained an EPA/state identification number, must renotify to identify the dangerous waste fuel activities;

(c) Storage.

(i) For short term accumulation by generators who burn their dangerous waste fuel on-site, the applicable provisions of WAC (~~(173-303-200 or)~~) 173-303-172, 173-303-200, and 173-303-201.

(ii) For all burners who store dangerous waste fuel, the applicable storage provisions of:

(A) WAC 173-303-280 through 173-303-395;

(B) WAC 173-303-800 through 173-303-840; and

(C) WAC 173-303-400 for interim status facilities or WAC 173-303-600 through 173-303-692 for final status facilities (the air emission requirements do not apply to burners that meet the small quantity burner exemption at 40 C.F.R. 266.101);

(d) Required notices. Before a burner accepts the first shipment of dangerous waste fuel from a distributor, or a blender, or a generator the burner must provide the distributor, or the blender, or the generator a one-time written and signed notice certifying that:

(i) The burner has notified as described under subsection (3) of this section; and

(ii) The dangerous waste fuel will only be burned in an industrial furnace or boiler identified in subsection (3)(b) of this section.

(e) Recordkeeping. In addition to the applicable recordkeeping requirements of WAC 173-303-380, a burner must keep a copy of each certification notice sent for at least five years from the date the burner last receives dangerous waste fuel from the person who received the certification notice.

(f) Local requirements. Any person who burns dangerous waste for energy recovery must comply with air emission requirements of the local air pollution control authority (or department of ecology if no local authority with jurisdiction exists).

**AMENDATORY SECTION** (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-515 Standards for the management of used oil.** (1) **Purpose.** The purpose of this section is to provide used oil management standards for generators, transporters, collection centers, aggregation points, transfer facilities, processors, and re-refiners, burners, and marketers of used oil.

(2) **Definitions.** In addition to the terms used in this chapter, the definitions of 40 C.F.R. Part 279 are incorporated by reference when managing used oil under this section.

The term "hazardous waste" used in 40 C.F.R. Part 279 means "dangerous waste" as defined in WAC 173-303-040.

(3) **Applicability.** This section identifies those materials subject to regulation as used oil. For the purpose of this section, the applicability statements of 40 C.F.R. Part 279.10 are incorporated by reference, except 40 C.F.R. Part 279.10 (b)(2) and (3), and as modified below. In addition, the test methods at WAC 173-303-110(3) must be used.

Materials containing or otherwise contaminated with or derived from used oil: The term "materials" used in 40 C.F.R. Part 279.10 does not include dangerous waste.

(4) **Used oil specifications.** For the purpose of managing materials under this section, 40 C.F.R. Part 279.11 and 40 C.F.R. Part 261.3 (a)(2)(v) (rebuttable presumption) are incorporated by reference except that the test methods at WAC 173-303-110(3) must be used.

The table is included below for the reader's convenience.

Table 1—Used Oil Exceeding any Specification Level is Subject to this Section When Burned for Energy Recovery

| Constituent/property | Allowable level      |
|----------------------|----------------------|
| Arsenic              | 5 ppm maximum        |
| Cadmium              | 2 ppm maximum        |
| Chromium             | 10 ppm maximum       |
| Lead                 | 100 ppm maximum      |
| Flash point          | 100° F minimum       |
| Total halogens       | 4,000 ppm maximum\1\ |

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 C.F.R. 761.20(e).

\1\ Used oil containing more than 1,000 ppm total halogens is presumed to be a dangerous waste under the rebuttable presumption provided under 40 C.F.R. 279.10 (b)(1). Such used oil is subject to 40 C.F.R. Subpart H of Part 266 rather than this section when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

(5) **Prohibitions.** The prohibitions of 40 C.F.R. Part 279.12 are incorporated by reference. The prohibitions for managing materials under this section include those listed in 40 C.F.R. Part 279.12 and the following:

(a) Materials designating as EHW or WPCB cannot be managed under this section when burned for energy recovery. Note: Materials managed under this section containing 2 ppm or greater PCBs are subject to applicable requirements of 40 C.F.R. Part 761.20(e).

(b) Metal working fluids that are formulated with chlorinated compounds such as chlorinated paraffins or chlorinated alkene polymers cannot be managed under this section when burned for energy recovery.

(c) Ethylene glycol based fluids cannot be managed under this section. These fluids are subject to section WAC 173-303-522 when recycled.

(d) The use of used oil or other materials managed under this section as a dust suppressant is prohibited.

(e) Materials to be managed under this section are prohibited from being mixed with any dangerous waste. If any

material managed under this section is mixed with dangerous waste, the resultant mixture is dangerous waste and must be managed as such.

(6) **Standards for used oil generators.** This subsection applies to all used oil generators and persons managing materials under this section. The standards for used oil generators of 40 C.F.R. Parts 279.20 through 279.24 are incorporated by reference except 40 C.F.R. Part 279.21. Used oil generators and persons managing materials under this subsection are subject to the federal regulations listed above and the following:

(a) Storage requirements for containers and tanks.

(i) Containers must be closed at all times, except when adding or removing materials managed under this section.

(ii) Containers and tanks must not be opened, handled, managed or stored in a manner that may cause the container or tank to leak or rupture.

(b) Secondary containment requirements for storage of material managed under this section in tanks and containers.

The department may require secondary containment, on a case-by-case basis, in accordance with some or all of the requirements in WAC 173-303-630(7) and 173-303-640(4) if the department determines that a potential for spills and discharges, mismanagement, or other factors pose a threat to human health or the environment.

(c) Self-transport to approved collection centers. In addition to 40 C.F.R. Part 279.24(a), generators may self-transport quantities greater than 55 gallons to a used oil collection center: Provided, That the owner/operator of the center records the name, address, telephone number, date of delivery and quantity of used oil being delivered to the site by the generator.

(7) **Standards for used oil collection centers and aggregation points.** For the purpose of managing materials under this section, 40 C.F.R. Parts 279.30 through 279.32 are incorporated by reference. The standards for used oil collection centers under this subsection are those federal regulations listed above and the following modifications:

In addition to the requirements of 40 C.F.R. Part 279.31, the owner or operator of a used oil collection center may accept greater than 55 gallons of used oil from generators: Provided, That:

(a) The requirements for a used oil transfer facility (40 C.F.R. Parts 279.40 through 279.47) are complied with while that used oil is on site; and

(b) The owner/operator of the collection center records the name, address, telephone number, date of delivery and quantity of used oil being delivered to the site by the generator of the used oil; and

(c) Such records are kept on site for a period of three years.

(8) **Standards for used oil transporters and transfer facilities.** For the purpose of managing materials under this section, 40 C.F.R. Parts 279.40 through 279.47 are incorporated by reference except that the test methods at WAC 173-303-110(3) must be used and the annual reporting requirements of WAC 173-303-060 must be complied with. The standards for used oil transfer facilities under this subsection are those federal regulations listed above and the following modifications:

Additional reports. Upon determination by the department that the storage of used oil in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store used oil. This authority applies to tanks and secondary containment systems used to store used oil in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of used oil or the generation of hazardous by-products (e.g., hydrogen sulfide gas). Those observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(a) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(b) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (a) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the used oil until the repairs or improvements are completed and approved by the department.

(9) **Standards for used oil processors and rerefiners.** For the purpose of managing materials under this section, 40 C.F.R. Parts 279.50 through 279.59 are incorporated by reference except that the test methods at WAC 173-303-110(3) must be used and the annual reporting requirements of WAC 173-303-060 must be complied with. The standards for used oil processors and rerefiners under this subsection are those federal regulations listed above and the following:

(a) In addition to the general facility standards of 40 C.F.R. Part 279.52, owners and operators of used oil processing and/or rerefining facilities regulated under this subsection are subject to the following:

(i) Used oil and other materials managed under the standards for management of used oil may be stored on-site without a permit for ninety days prior to entering an active recycling process. An active recycling process refers to a dynamic recycling operation that occurs within the recycling unit such as a distillation or centrifuge unit. The phrase does not refer to passive storage-like activities that occur, for example, when tanks or containers are used for phase separation or for settling impurities;

(ii) Facility closure standards of WAC 173-303-610 (2) and (12); and

(iii) Financial requirements of WAC 173-303-620 (1)(e).

(b) Additional reports. Upon determination by the department that the storage of used oil in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store used oil. This authority applies to tanks and secondary containment systems used to store used oil in tanks and containers. The department's determination

of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of used oil or the generation of hazardous by-products (for example, hydrogen sulfide gas). Those observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(i) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(ii) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (b) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the used oil until such repairs or improvements are completed and approved by the department.

(10) **Standards for used oil burners who burn off-specification.** For the purpose of managing materials under this subsection, 40 C.F.R. Parts 279.60 through 279.67 are incorporated by reference except that the test methods at WAC 173-303-110(3) must be used and the annual reporting requirements of WAC 173-303-060 must be complied with.

(11) **Standards for used oil fuel marketers.** For the purpose of managing materials under this subsection, 40 C.F.R. Parts 279.70 through 279.75 are incorporated by reference. In addition, the annual reporting requirements of WAC 173-303-060 must be met.

(12) **Standards for disposal of used oil.** For the purpose of managing materials under this subsection, 40 C.F.R. Parts 279.80 through 279.82(a) are incorporated by reference.

(13) **Testing required.**

(a) Notwithstanding any other provisions of this section, the department may require any person to test their used oil according to the methods set forth in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication, SW-846* to either determine if the used oil is on-specification as described in WAC 173-303-515(4), determine whether the used oil contains a listed hazardous waste, or determine if the used oil is prohibited from being managed as used oil in WAC 173-303-515(5).

(b) Where the federal regulations that have been incorporated by reference refer to 40 C.F.R. 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110(3).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-520 Special requirements for reclaiming spent lead acid battery wastes.** This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials ("spent batteries"). (Also, see WAC 173-303-120(3).)

(1) Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, or who store spent batteries but do not reclaim them (other than spent batteries that

are to be regenerated) are subject only to the requirements of WAC 173-303-016 through ~~((173-303-164))~~ 173-303-169 except for 173-303-060, and WAC 173-303-960 if such spent batteries are going to a battery reclaimer. Persons who reclaim spent batteries through regeneration (such as by electrolyte replacement) are not subject to 40 C.F.R. Part 268, which is incorporated by reference at WAC 173-303-140 (2)(a).

(a) Exporters who send spent batteries to a foreign destination ~~((other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) which is incorporated by reference in WAC 173-303-230(1) (in which case the exporter is subject to the))~~ must:

(i) Comply with the requirements of 40 C.F.R. Part 262, Subpart H which is incorporated by reference in WAC 173-303-230(1)(~~)~~ must:

~~(i) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56 (a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference in WAC 173-303-230(1);~~

~~(ii) Export such spent batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. 262 Subpart E which is incorporated by reference in WAC 173-303-230(1);~~

~~(iii)); and~~

~~(ii) Provide a copy of the ((EPA Acknowledgment of Consent))~~ applicable movement documents for the shipment to the transporter transporting the shipment for export.

(b) ~~((A spent battery))~~ Transporters transporting a shipment of spent batteries to a foreign destination ~~((other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the transporter is subject to))~~ must comply with the requirements of 40 C.F.R. Part 262, Subpart H which is incorporated by reference in WAC 173-303-230(1)(~~)~~) and may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(i) A copy of the ~~((EPA Acknowledgment of Consent))~~ applicable movement documents accompanies the shipment; and

(ii) The shipment is delivered to the facility designated by the person initiating the shipment.

(2) Owners and operators of battery reclaiming facilities that store spent lead acid batteries prior to reclaiming (other than spent batteries that are to be regenerated) them are subject to the following requirements:

(a) For all reclaimers, the applicable storage provisions of:

- (i) WAC 173-303-280 (2) and (3);
- (ii) WAC 173-303-282;
- (iii) WAC 173-303-283;
- (iv) WAC 173-303-290;
- (v) WAC 173-303-310 through 173-303-360;
- (vi) WAC 173-303-380;
- (vii) WAC 173-303-390 (2) and (3);
- (viii) WAC 173-303-395; and
- (ix) WAC 173-303-800 through 173-303-840.

(b) For reclaimers with interim status permits, the applicable storage provisions of WAC 173-303-400 including Subparts F through L of 40 C.F.R. Part 265;

(c) For reclaimers with final facility permits, the applicable storage provisions of:

- (i) WAC 173-303-600 through 173-303-650; and
- (ii) WAC 173-303-660.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-522 Special requirements for recycling spent antifreeze.** (1) Applicability. This section applies to the recycling of spent antifreeze. Antifreeze means ethylene glycol based coolant used as a heat exchange medium in motor vehicle radiators, motorized equipment, or in other industrial processes. For the purposes of this section recycling means reclamation and reuse, but not burning for energy recovery. (Also, see WAC 173-303-120(3).)

(2) Standards. Persons who generate, transport, or store spent antifreeze but do not reclaim or recycle it are subject to the requirements of WAC 173-303-050, 173-303-145, and 173-303-960 if their spent antifreeze is going to a recycler. Any discharge of spent antifreeze to the environment constitutes disposal and is subject to full regulation under this chapter.

(a) Generator requirements:

(i) Persons who reclaim or recycle their spent antifreeze on-site, or send their antifreeze off-site to be reclaimed or recycled, must keep records for a period of five years from the date of reclamation/recycling.

Proof of reclamation/recycling is either a log for on-site reclamation/recycling or an invoice or bill of lading for off-site reclamation/recycling.

(ii) Containers and tanks used to accumulate spent antifreeze must be labeled "spent antifreeze."

(iii) Spent antifreeze that is to be reclaimed can be accumulated on-site for any length of time, and in any amount.

(iv) During accumulation, spent antifreeze must be stored in a manner to prevent releases to the environment. This includes, but is not limited to, storing wastes in compatible containers, on impermeable surfaces, or in secondary containment structures.

(b) If spent antifreeze is mixed with another dangerous waste, generators are subject to the generator requirements, WAC 173-303-170 through 173-303-230.

(c) Persons who generate spent antifreeze that is not reclaimed/recycled, but is otherwise disposed, are subject to all applicable requirements of this chapter.

(3) Transporters and transfer facility requirements:

(a) Persons engaged in routine off-site transportation of spent antifreeze are required to obtain ~~((a state/EPA ID number))~~ an EPA/state ID#, WAC 173-303-060, and to comply with the transporter requirements, WAC 173-303-240.

(b) If spent antifreeze is mixed with another dangerous waste, transporters are subject to the generator requirements, WAC 173-303-170 through 173-303-230.

(c) Transporters who store spent antifreeze at a transfer facility are allowed to use tanks or containers as defined in

WAC 173-303-040, and store such waste for up to ten days, WAC 173-303-240(6).

Transporters may store spent antifreeze at a transfer facility for longer than ten days if they meet the requirements for tank and/or container management, including secondary containment in WAC 173-303-630 through 173-303-640.

(4) Reclamation/recycling facility requirements: Owners and operators of antifreeze reclaiming/recycling facilities are subject to the conditions of WAC 173-303-120 (4)(c). These conditions apply equally to facilities whether or not ecology approved case-by-case seventy-two hour storage of spent antifreeze occurs prior to reclamation.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

**WAC 173-303-525 Special requirements for recyclable material utilized for precious metal recovery.** (1) Applicability and requirements. (Also, see WAC 173-303-120(3).)

(a) This section applies to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(i) Notification requirements under WAC 173-303-060;

(ii) WAC 173-303-180 (for generators), 173-303-250 (for transporters), and 173-303-370 (for persons who store); and

(iii) For precious metals exported to or imported from ~~((designated OECD member))~~ other countries for recovery, 40 C.F.R. subpart H of part 262 (incorporated by reference at WAC 173-303-230(1)) ~~((and 173-303-290 (1)(b)). For precious metals exported to or imported from non-OECD countries for recovery, 40 C.F.R. subpart E (incorporated by reference at WAC 173-303-230(1)) and 173-303-230(2))~~.

(c) Persons who store recycled materials that are regulated under this section must keep the following records to document that they are not accumulating these materials speculatively (as defined in WAC 173-303-016 (5)(d)(ii));

(i) Records showing the volume of these materials stored at the beginning of the calendar year;

(ii) The amount of these materials generated or received during the calendar year; and

(iii) The amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively (as defined in WAC 173-303-016 (5)(d)(ii)) are dangerous wastes and are subject to all applicable provisions of this chapter.

(2) Additional regulation of recyclable materials utilized for precious metal recovery on a case-by-case basis.

The department may decide on a case-by-case basis that persons accumulating or storing recyclable materials utilized for precious metal recovery should be regulated under WAC 173-303-120(4). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the mate-

rials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the department will consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

The procedures for this decision are set forth in subsection (3) of this section.

(3) Procedures for case-by-case regulation of recyclable materials utilized for precious metal recovery.

The department will use the following procedures when determining whether to regulate recyclable materials utilized for precious metal recovery under the provisions of WAC 173-303-120(4), rather than under the provisions of subsection (1) of this section.

(a) If a generator is accumulating the waste, the department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of WAC 173-303-170 and 173-303-190 through 173-303-230. The notice will become final within thirty days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the department will hold a public hearing. The department will provide notice of the hearing to the public and allow public participation at the hearing. The department will issue a final order after the hearing stating whether or not compliance with WAC 173-303-170 and 173-303-190 through 173-303-230 is required. The order becomes effective thirty days after service of the decision unless the department specifies a later date or unless review by the department is requested. The order may be appealed to the pollution control hearings board, in accordance with WAC 173-303-845, by any person who participated in the public hearing.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of WAC 173-303-800 through 173-303-840. The owner or operator of the facility must apply for a permit within no less than sixty days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the department's decision ~~((he))~~ they may do so in ~~((his))~~ their permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question of whether the department's decision was proper will remain open for consideration during the public comment period discussed under WAC 173-303-840 (4)(d) and in any subsequent hearing.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-573 Standards for universal waste management. (1) Scope.**

(a) This section establishes requirements for managing the following:

- (i) Batteries as described in subsection (2) of this section;
  - (ii) Mercury-containing equipment as described in subsection (3) of this section; and
  - (iii) Lamps as described in subsection (5) of this section.
- (b) This section provides an alternative set of management standards in lieu of regulation under the rest of this chapter except for WAC 173-303-050, 173-303-145, and 173-303-960.

**(2) Applicability - Batteries.**

(a) Batteries covered under this section.

(i) The requirements of this section apply to persons managing batteries, as described in WAC 173-303-040, except those listed in (b) of this subsection.

(ii) Spent lead-acid batteries which are not managed under WAC 173-303-120 (3)(f) and 173-303-520, are subject to management under this section.

(b) Batteries not covered under this section. The requirements of this section do not apply to persons managing the following batteries:

(i) Spent lead-acid batteries that are managed under WAC 173-303-120(3) and 173-303-520.

(ii) Batteries, as described in WAC 173-303-040, that are not yet wastes under WAC 173-303-016, 173-303-017, or 173-303-070, including those that do not meet the criteria for waste generation in (c) of this subsection.

(iii) Batteries, as described in WAC 173-303-040, that are not dangerous waste. A battery is a dangerous waste if it exhibits one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100.

(c) Generation of waste batteries.

(i) A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).

(ii) An unused battery becomes a waste on the date the handler decides to discard it.

**(3) Applicability - Mercury-containing equipment.**

(a) Mercury-containing equipment covered under this section. The requirements of this section apply to persons managing mercury-containing equipment, as described in WAC 173-303-040, except those listed in (b) of this subsection.

(b) Mercury-containing equipment not covered under this section. The requirements of this section do not apply to persons managing the following mercury-containing equipment:

(i) Mercury-containing equipment that is not yet a waste under WAC 173-303-016, 173-303-017, or 173-303-070. Paragraph (c) of this subsection describes when mercury-containing equipment becomes a waste;

(ii) Mercury-containing equipment that is not a dangerous waste. Mercury-containing equipment is a dangerous waste if it exhibits one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100; and

(iii) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment.

(i) Used mercury-containing equipment becomes a waste on the date it is discarded.

(ii) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

(4) ~~((Reserve.))~~ (Reserved.)

**(5) Applicability - Lamps.**

(a) Lamps covered under this section. The requirements of this section apply to persons managing lamps, as described in WAC 173-303-040, except those listed in (b) of this subsection.

(b) Lamps not covered under this section. The requirements of this section do not apply to persons managing the following lamps:

(i) Lamps that are not yet wastes under WAC 173-303-016, 173-303-017, or 173-303-070. Paragraph (c) of this subsection describes when lamps become wastes.

(ii) Lamps that are not dangerous waste. Lamps that do not exhibit one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100 are not dangerous waste.

(c) Generation of waste lamps.

(i) A used lamp becomes a waste on the date it is discarded.

(ii) An unused lamp becomes a waste on the date the handler decides to discard it.

**(6) Applicability - Small quantity handlers of universal waste.** Subsections (6) through (16) of this section apply to small quantity handlers of universal waste (as defined in WAC 173-303-040).

**(7) Prohibitions.**

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (13) of this section; or by managing specific wastes as provided in subsection (9) of this section.

**(8) Notification.**

A small quantity handler of universal waste is not required to notify the department of universal waste handling activities.

**(9) Waste management.**

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(ii) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(A) Sorting batteries by type;

- (B) Mixing battery types in one container;
- (C) Discharging batteries so as to remove the electric charge;
- (D) Regenerating used batteries;
- (E) Disassembling batteries or battery packs into individual batteries or cells;
- (F) Removing batteries from consumer products; or
- (G) Removing electrolyte from batteries.

(iii) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100.

(A) If the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it is subject to all applicable requirements of this chapter. The handler is considered the generator of the dangerous electrolyte and/or other waste and is subject to WAC 173-303-170 through 173-303-230.

(B) If the electrolyte or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(ii) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(A) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes the ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of WAC 173-303-200;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of WAC 173-303-200;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, nonleaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(ii) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(A) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and

(B) Follows all requirements for removing ampules and managing removed ampules under (b)(ii) of this subsection; and

(iv)(A) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100:

(I) Mercury or cleanup residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (for example, the remaining mercury-containing device).

(B) If the mercury, residues, and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it subject to WAC 173-303-170 through 173-303-230.

(C) If the mercury, residues, and/or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal waste lamps. A small quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must immediately clean up and place in a container any universal waste lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the lamps, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(ii) A small quantity handler of universal waste must minimize lamp breakage by accumulating lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

The containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(iii) A small quantity handler of universal waste must store lamps accumulated in cardboard or fiber containers indoors, meaning in a structure that prevents the container from being exposed to the elements.

**(10) Labeling/markings.**

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (that is, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b)(i) Universal waste mercury-containing equipment (that is, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste Mercury-Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(ii) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(c) Universal waste lamps (that is, each lamp), or a container in which the lamps are accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

**(11) Accumulation time limits.**

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of (b) of this subsection are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(ii) Marking or labeling each individual item of universal waste (for example, each battery, thermostat, mercury-con-

taining equipment, or lamp) with the date it became a waste or was received;

(iii) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(iv) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

**(12) Employee training.**

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

**(13) Response to releases.**

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is dangerous waste, and if so, must manage the dangerous waste in compliance with all applicable requirements of this chapter. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with WAC 173-303-170 through 173-303-230.

**(14) Off-site shipments.**

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transportes universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subsections (28) through (34) of this section while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 C.F.R. Parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Parts 172 through 180.

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(i) Receive the waste back when notified that the shipment has been rejected, or

(ii) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that ~~((he has))~~ they have received from another handler. If a handler rejects a shipment or a portion of a shipment, ~~((he))~~ they must contact the originating handler to notify ~~((him))~~ them of the rejection and to discuss reshipment of the load. The handler must:

(i) Send the shipment back to the originating handler; or

(ii) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing dangerous waste that is not a universal waste, the handler must immediately notify the department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department will provide instructions for managing the dangerous waste.

(h) If a small quantity handler of universal waste receives a shipment of nondangerous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

**(15) Tracking universal waste shipments.**

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

**(16) Exports.**

A small quantity handler of universal waste who sends universal waste to a foreign destination ~~((other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler))~~ is subject to the requirements of 40 C.F.R. Part 262, Subpart H which is incorporated by reference at WAC 173-303-230(~~)-must~~:

~~((a) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56 (a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference at WAC 173-303-230(1);~~

~~((b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. Subpart E of Part 262 which is incorporated by reference at WAC 173-303-230(1); and~~

~~((c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export)).~~

**(17) Applicability - Large quantity handlers of universal waste.**

Subsections (17) through (27) of this section apply to large quantity handlers of universal waste (as defined in WAC 173-303-040).

**(18) Prohibitions.**

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (24) of this section; or by managing specific wastes as provided in subsection (20) of this section.

**(19) Notification.**

(a)(i) Except as provided in (a)(ii) of this subsection, a large quantity handler of universal waste must have sent written notification of universal waste management to the department, and received an EPA Identification Number, before meeting or exceeding the 11,000 pound storage limit and/or before meeting or exceeding the 2,200 pound storage limit for lamps.

(ii) A large quantity handler of universal waste who has already notified the department of their dangerous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(b) This notification must include:

(i) The universal waste handler's name and mailing address;

(ii) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(iii) The address or physical location of the universal waste management activities;

(iv) A list of all of the types of universal waste managed by the handler (for example, batteries, mercury-containing equipment, and lamps); and

(v) A statement indicating that the handler is accumulating more than 11,000 pounds of universal waste at one time, and/or a statement indicating that the handler is accumulating more than 2,200 pounds of lamps at one time. (For example, if a handler is accumulating 6,000 pounds of batteries, 4,500 pounds of mercury-containing equipment and 600 pounds of universal waste lamps, they would notify for having 11,100 pounds of universal waste at one time - Likewise, if a handler is accumulating 6,000 pounds of batteries, 2,000 pounds of mercury-containing equipment and 2,400 pounds of universal waste lamps, they would also need to notify for exceeding the 2,200 pound limit for universal waste lamps.)

**(20) Waste management.**

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(ii) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(A) Sorting batteries by type;

(B) Mixing battery types in one container;

(C) Discharging batteries so as to remove the electric charge;

(D) Regenerating used batteries;

(E) Disassembling batteries or battery packs into individual batteries or cells;

(F) Removing batteries from consumer products; or

(G) Removing electrolyte from batteries.

(iii) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100.

(A) If the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the dangerous electrolyte and/or other waste and is subject to WAC 173-303-170 through 173-303-230.

(B) If the electrolyte or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(ii) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(A) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury (~~((clean-up))~~) cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules, from that containment device to a container that meets the requirements of WAC 173-303-200;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of WAC 173-303-200;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, nonleaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(iii) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(A) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and

(B) Follows all requirements for removing ampules and managing removed ampules under (b)(ii) of this subsection; and

(iv)(A) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100:

(I) Mercury or (~~((clean-up))~~) cleanup residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (for example, the remaining mercury-containing device).

(B) If the mercury, residues, and/or other solid waste exhibits a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with WAC 173-303-170 through 173-303-230.

(C) If the mercury, residues, and/or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal waste lamps. A large quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must immediately clean up and place in a container any universal waste lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the lamps, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(ii) A large quantity handler of universal waste must minimize lamp breakage by accumulating lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(iii) A large quantity handler of universal waste must store lamps accumulated in cardboard or fiber containers

indoors, meaning in a structure that prevents a container from being exposed to the elements.

**(21) Labeling/markings.**

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (that is, each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b)(i) Mercury-containing equipment (that is, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury-Containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(ii) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(c) Universal waste lamp (that is, each lamp), or a container in which the lamps are accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

**(22) Accumulation time limits.**

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of (b) of this subsection are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(ii) Marking or labeling the individual item of universal waste (for example, each battery, thermostat, mercury-containing equipment, or lamp) with the date it became a waste or was received;

(iii) Maintaining an inventory system on site that identifies the date the universal waste being accumulated became a waste or was received;

(iv) Maintaining an inventory system on site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

**(23) Employee training.**

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

**(24) Response to releases.**

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is dangerous waste, and if so, must manage the dangerous waste in compliance with all applicable requirements of this chapter. The handler is considered the generator of the material resulting from the release, and is subject to WAC 173-303-145 and 173-303-170 through 173-303-230.

**(25) Off-site shipments.**

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transportes universal waste off site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subsections (28) through (34) of this section while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 C.F.R. 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(i) Receive the waste back when notified that the shipment has been rejected; or

(ii) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that ~~((he has))~~ they have

received from another handler. If a handler rejects a shipment or a portion of a shipment, ~~((he)) they~~ must contact the originating handler to notify ~~((him)) them~~ of the rejection and to discuss reshipment of the load. The handler must:

(i) Send the shipment back to the originating handler; or  
 (ii) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing dangerous waste that is not a universal waste, the handler must immediately notify the department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department will provide instructions for managing the dangerous waste.

(h) If a large quantity handler of universal waste receives a shipment of nondangerous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

**(26) Tracking universal waste shipments.**

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste received must include the following information:

(i) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(ii) The quantity of each type of universal waste received (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date of receipt of the shipment of universal waste.

(b) Shipments off site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste sent must include the following information:

(i) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(ii) The quantity of each type of universal waste sent (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date the shipment of universal waste left the facility.

**(c) Record retention.**

(i) A large quantity handler of universal waste must retain the records described in (a) of this subsection for at least three years from the date of receipt of a shipment of universal waste.

(ii) A large quantity handler of universal waste must retain the records described in (b) of this subsection for at least three years from the date a shipment of universal waste left the facility.

**(27) Exports.**

A large quantity handler of universal waste who sends universal waste to a foreign destination ~~((other than to those~~

~~OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler))~~ is subject to the requirements of 40 C.F.R. Part 262, Subpart H which is incorporated by reference at WAC 173-303-230(~~) must:~~

~~(a) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56 (a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference at WAC 173-303-230(1);~~

~~(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. 262 Subpart E which is incorporated by reference at WAC 173-303-230(1); and~~

~~(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export).~~

**(28) Applicability - Universal waste transporters.** Subsections (28) through (34) of this section apply to universal waste transporters (as defined in WAC 173-303-040).

**(29) Prohibitions.**

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (32) of this section.

**(30) Waste management.**

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 C.F.R. Part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 C.F.R. 171.8. For purposes of the Department of Transportation regulations, a material is considered a dangerous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in WAC 173-303-180. Because universal waste does not require a dangerous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 C.F.R. 173.2. As universal waste shipments do not require a manifest under WAC 173-303-180, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."

**(31) Storage time limits.**

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements for small or large quantity handlers (subsections (6) through (27) of this section) while storing the universal waste.

**(32) Response to releases.**

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is dangerous waste, and if so, it is subject to all applicable requirements of this chapter. If the waste is determined to be a dangerous waste, the transporter is subject to WAC 173-303-145 and 173-303-170 through 173-303-230.

**(33) Off-site shipments.**

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off site meets the Department of Transportation's definition of hazardous materials under 49 C.F.R. 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Part 172.

**(34) Exports.**

A universal waste transporter transporting a shipment of universal waste to a foreign destination (~~other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler)~~) is subject to the requirements of 40 C.F.R. Part 262, Subpart H which is incorporated by reference at WAC 173-303-230(~~(-)~~ may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment).

**(35) Applicability - Destination facilities.** Subsections (35) through (37) of this section apply to destination facilities.

(a) The owner or operator of a destination facility (as defined in WAC 173-303-040) is subject to all applicable requirements of WAC 173-303-140 and 173-303-141, 173-303-280 through 173-303-525, 173-303-600 through 173-303-695, 173-303-800 through 173-303-840, and the notification requirement at WAC 173-303-060(~~(+)~~); or

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with WAC 173-303-120 (4)(c).

**(36) Off-site shipments.**

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, (~~he~~) they must contact the shipper to notify (~~him~~) them of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(i) Send the shipment back to the original shipper; or

(ii) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the owner or operator of a destination facility receives a shipment containing dangerous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the department of the illegal shipment, and provide the name, address, and phone number of the shipper. The department will provide instructions for managing the dangerous waste.

(d) If the owner or operator of a destination facility receives a shipment of nondangerous, nonuniversal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

**(37) Tracking universal waste shipments.**

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste received must include the following information:

(i) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(ii) The quantity of each type of universal waste received (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in (a) of this subsection for at least three years from the date of receipt of a shipment of universal waste.

**(38) Imports.**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of 40 C.F.R. Part 262, Subpart H (as incorporated by reference at WAC 173-303-230) and of this section, immediately after the waste enters the United States, as indicated in (a) through (c) of this subsection:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subsections (28) through (34) of this section.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subsections (6) through (27) of this section, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subsections (35) through (37) of this section.

~~((d) Persons managing universal waste that is imported from an OECD country as specified at 40 C.F.R. 262.58 (a)(1), which is incorporated by reference at WAC 173-303-230(1), are subject to (a) through (c) of this subsection, in addition to the requirements of 40 C.F.R. Part 262 subpart H, which is incorporated by reference at WAC 173-303-230(1).))~~

(39) **General - Petitions.** Subsections (39) and (40) of this section address petitions to include other wastes under this section.

(a) Any person seeking to add a dangerous waste or a category of dangerous waste to this section may petition for a regulatory amendment under subsections (39) and (40) of this section and WAC 173-303-910 (1) and (7).

(b) To be successful, the petitioner must demonstrate to the satisfaction of the department that regulation under the universal waste regulations of this section is: Appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the dangerous waste program. The petition must include the information required by WAC 173-303-910 (1)(b). The petition should also address as many of the factors listed in subsection (40) of this section as are appropriate for the waste or waste category addressed in the petition.

(c) The department will evaluate petitions using the factors listed in subsection (40) of this section. The department will grant or deny a petition using the factors listed in subsection (40) of this section. The decision will be based on the weight of evidence showing that regulation under this section is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the dangerous waste program.

**(40) Factors for petitions to include other wastes under this section.**

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in WAC 173-303-081 or 173-303-082, or (if not listed) a proportion of the waste stream exhibits one or more characteristics or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100. (When a characteristic waste is added to the universal waste regulations of this section by using a generic name to identify the waste category (for example, batteries), the definition of universal waste in WAC 173-303-040 will be amended to include only the dangerous waste portion of the waste category (for example, dangerous waste batteries.) Thus, only the portion of the waste stream that does exhibit one or more characteristics or criteria (that is, is dangerous waste) is subject to the universal waste regulations of this section;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (for example, more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared

to other dangerous wastes, and specific management standards proposed or referenced by the petitioner (for example, waste management requirements appropriate to be added to subsections (9), (20), and (30) of this section; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under this section will increase the likelihood that the waste will be diverted from nondangerous waste management systems (for example, the municipal waste stream, nondangerous industrial or commercial waste stream, municipal sewer or storm-water systems) to recycling, treatment, or disposal in compliance with the Hazardous Waste Management Act chapter 70.105 RCW, this chapter, and RCRA Subtitle C.

(g) Regulation of the waste or category of waste under this section will improve implementation of and compliance with the dangerous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

**(41) Applicability - Household and conditionally exempt small quantity generator waste.**

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(i) Household wastes that are exempt under WAC 173-303-071 (3)(c) and are also of the same type as the universal wastes defined at WAC 173-303-040; and/or

(ii) Small quantity generator wastes that are conditionally exempt under WAC (~~(173-303-070(8))~~) 173-303-171 and are also of the same type as the universal wastes defined at WAC 173-303-040.

(b) Persons who commingle the wastes described in (a)(i) and (ii) of this subsection together with universal waste regulated under this section must manage the commingled waste under the requirements of this section.

AMENDATORY SECTION (Amending WSR 03-07-049, filed 3/13/03, effective 4/13/03)

**WAC 173-303-578 Military munitions. (1) Applicability.**

(a) The rules in this section identify when military munitions become a solid waste, and, if these wastes are also dangerous under this section or WAC 173-303-016 through 173-303-100, the management standards that apply to these wastes.

(b) Unless otherwise specified in this section, all applicable requirements in this chapter apply to waste military munitions.

**(2) Definition of solid waste.**

(a) A military munition is not a solid waste when:

(i) Used for its intended purpose, including:

(A) Use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions); or

(B) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or

(C) Recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range

clearance activities at active or inactive ranges. However, "use for intended purpose" does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.

(ii) An unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal as defined in WAC 173-303-016 (5)(a), or burning for energy recovery as defined in WAC 173-303-016 (5)(b).

(b) An unused military munition is a solid waste when any of the following occurs:

(i) The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in (a) of this subsection), incinerated, or treated prior to disposal; or

(ii) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal; or

(iii) The munition is deteriorated or damaged (for example, the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or

(iv) The munition has been declared a solid waste by an authorized military official.

(c) A used or fired military munition is a solid waste:

(i) When transported off range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or

(ii) If recovered, collected, and then disposed of by burial, or landfilling either on or off a range.

(d) A used or fired military munition is a solid waste, and, therefore, is potentially subject to corrective action under WAC 173-303-646 or imminent and substantial endangerment authorities under WAC 173-303-960, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

(e) Military munitions at closed or transferred ranges. Munitions discharged during military activities are discarded material (and therefore solid waste) for purposes of WAC 173-303-646 under the following circumstance:

The munition is left in place at the firing range at the time the range is closed or when the range is transferred from military control, whichever occurs first.

### (3) Standards applicable to emergency responses.

Explosives and munitions emergencies involving military munitions or explosives are subject to WAC 173-303-170((~~5~~)) (6), 173-303-240(10), 173-303-400 (2)(c)(xiii), 173-303-600 (3)(p), and 173-303-800 (7)(c), or alternatively to WAC 173-303-804.

### (4) Standards applicable to the storage of solid waste military munitions.

(a) Criteria for dangerous waste regulation of waste non-chemical military munitions in storage.

(i) Waste military munitions in storage that exhibit a dangerous waste characteristic, criteria, or are listed as dangerous waste under WAC 173-303-070 are listed or identified as a dangerous waste (and thus are subject to regulation under this chapter), unless all the following conditions are met:

(A) The waste military munitions are not chemical agents or chemical munitions.

(B) The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB).

(C) The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions.

(D) Within ninety days of August 12, 1997, or within ninety days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the department of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in (a)(i) of this subsection is claimed.

(E) The owner or operator must provide oral notice to the department within twenty-four hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of (a)(i) of this subsection that may endanger health or the environment. In addition, a written submission describing the circumstances must be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of (a)(i) of this subsection.

(F) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of (a)(i) of this subsection, and must maintain records of the findings of these inventories and inspections for at least three years.

(G) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

(ii) The conditional exemption in (a)(i) of this subsection from regulation as dangerous waste applies only to the storage of nonchemical waste military munitions. It does not affect the regulatory status of waste military munitions as dangerous wastes with regard to transportation, treatment or disposal.

(iii) The conditional exemption in (a)(i) of this subsection applies only so long as all of the conditions in (a)(i) of this subsection are met.

(b) Notice of termination of waste storage. The owner or operator must notify the department when a storage unit identified in (a)(i)(D) of this subsection will no longer be used to store waste military munitions.

(c) Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under (a)(i) of this subsection, an application may be filed with the department for reinstatement of the conditional exemption from dangerous waste storage regulation with respect to such

munition as soon as the munition is returned to compliance with the conditions of (a)(i) of this subsection. If the department finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the department may reinstate the conditional exemption under (a)(i) of this subsection. If the director does not take action on the reinstatement application within sixty days after receipt of the application, then reinstatement will be deemed granted, retroactive to the date of the application. However, the department may terminate a conditional exemption reinstated by default in the preceding sentence if it finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under (a)(i) of this subsection, the department may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.

(d) Waste chemical munitions.

(i) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under WAC 173-303-070, are listed or identified as a hazardous waste and are subject to the applicable regulatory requirements of RCRA subtitle C and the Hazardous Waste Management Act.

(ii) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under WAC 173-303-070, are not subject to the storage prohibition in RCRA section 3004(j), codified at 40 C.F.R. 268.50 (which is incorporated by reference at WAC 173-303-140 (2)(a)).

(e) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in subsection (4)(a)(i) of this section, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the DDESB storage standards will become effective for purposes of subsection (4)(a)(i) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in subsection (4)(a)(i) of this section have been amended.

**(5) Standards applicable to the treatment and disposal of waste military munitions.**

The treatment and disposal of dangerous waste military munitions are subject to the applicable permitting, procedural, and technical standards of this chapter.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-600 Final facility standards.** Purpose, scope, and applicability.

(1) Final facility standards are established in WAC 173-303-600 through 173-303-695, and also include WAC 173-303-280 through 173-303-395. Final facility standards are

minimum statewide standards which describe the acceptable management of dangerous waste.

(2) The final facility standards apply to owners and operators of all facilities which treat, store or dispose of dangerous waste, and which are not exempted by subsection (3) of this section. Only permitted facilities which treat, store or dispose of dangerous waste and owners or operators of a facility which recycles dangerous waste in compliance with subsection (5) of this section can receive dangerous waste from off-site sources, unless exempted by subsection (3) of this section.

(3) The final facility standards do not apply to:

(a) Persons whose disposal activities are permitted under the Marine Protection, Research and Sanctuaries Act, except that storage, or treatment facilities where dangerous waste is loaded onto an ocean vessel for incineration or disposal at sea are subject to final facility standards;

(b) Persons whose disposal activities are permitted under the underground injection control program of the Safe Drinking Water Act, except that storage, or treatment facilities needed to handle dangerous wastes are subject to final facility standards;

(c) The owner or operator of a POTW which treats, stores, or disposes of dangerous waste provided (~~he has~~) they have a permit by rule pursuant to the requirements of WAC 173-303-802(4);

(d) A generator accumulating waste on site in compliance with all applicable requirements in WAC 173-303-171, 173-303-172, 173-303-174, and 173-303-200 and 173-303-201;

(e) The owner or operator of a facility which is permitted to manage solid waste pursuant to chapter 173-350 WAC, if the only dangerous waste the facility manages is excluded from regulation under this chapter by WAC (~~173-303-070(8))~~ 173-303-171;

(f) A farmer disposing of waste pesticides from (~~his~~) their own use provided (~~he complies~~) they comply with WAC 173-303-160 (2)(b);

(g) A transporter storing a manifested shipment of dangerous waste for ten days or less in accordance with WAC 173-303-240(6);

(h) Any person, other than an owner or operator who is already subject to the final facility standards, who is carrying out an immediate or emergency response to contain or treat a discharge or potential discharge of a dangerous waste or hazardous substance;

(i) The owner or operator of a facility which is in compliance with the interim status requirements of WAC 173-303-400 and 173-303-805, until final administrative disposition of (~~his~~) their final facility permit;

(j) The owner or operator of a totally enclosed treatment facility or elementary neutralization or wastewater treatment unit as defined in WAC 173-303-040, provided that (~~he has~~) they have a permit by rule pursuant to the requirements of WAC 173-303-802(5);

(k) The addition, by a generator, of absorbent material to waste in a container, or of waste to absorbent material in a container, provided that these actions occur at the time the waste is first placed in containers or, in the case of repackaging of previously containerized waste into new containers, at

the time the waste is first placed into the new containers and the generator complies with all applicable requirements of WAC 173-303-200 ((1)(b)) and 173-303-201 for large quantity generators, WAC 173-303-172 for medium quantity generators, and WAC 173-303-395 (1)(a) and (b);

(l) The compaction or sorting of miscellaneous waste forms such as cans, rags, and bottles in a container, so long as the activity is solely for the purpose of reducing waste void space, and so long as these activities are conducted in a manner that protects human health and prevents any release to the environment and the generator complies with all applicable requirements of WAC 173-303-200 ((1)(b)) and 173-303-201 for large quantity generators, WAC 173-303-172 for medium quantity generators, and WAC 173-303-395 (1)(a) and (b);

(m) Generators treating dangerous waste on-site in tanks, containers, or containment buildings that are used for accumulation of such wastes provided the generator complies with the WAC 173-303-170((3)) (2)(b);

(n) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in WAC 173-303-040, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 C.F.R. section 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in WAC 173-303-395 (1)(a);

(o) Universal waste handlers and universal waste transporters (as defined in WAC 173-303-040) handling the wastes listed below. These handlers are subject to regulation under WAC 173-303-573, when handling the below listed universal wastes.

(i) Batteries as described in WAC 173-303-573(2);

(ii) Mercury-containing equipment as described in WAC 173-303-573(3); and

(iii) Lamps as described in WAC 173-303-573(5);

(p)(i) Except as provided in (p)(ii) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a dangerous waste;

(B) An imminent and substantial threat of a discharge of dangerous waste;

(C) A discharge of a material that, when discharged, becomes a dangerous waste;

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in WAC 173-303-040.

(ii) An owner or operator of a facility otherwise regulated by WAC 173-303-600 must comply with all applicable requirements of WAC 173-303-340 and 173-303-350.

(iii) Any person who is covered by (p)(i) of this subsection and who continues or initiates dangerous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(iv) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of (~~his or her~~) their official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA/state identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

(q) WAC 173-303-578 identifies when the requirements of WAC 173-303-600 apply to the storage of military munitions classified as solid waste under WAC 173-303-578(2). The treatment and disposal of dangerous waste military munitions are subject to the applicable permitting, procedural, and technical standards in this chapter.

(4) (~~(Reserve.)~~) (Reserved.)

(5) The owner or operator of a facility which recycles dangerous waste may, for such recycled wastes only, comply with the applicable recycling standards specified in WAC 173-303-120 and 173-303-500 through 173-303-525 in lieu of the final facility standards.

(6) The owner or operator must comply with the special land disposal restrictions for certain dangerous wastes in WAC 173-303-140.

(7) The final facility requirements apply to owners or operators of all facilities that treat, store, or dispose of hazardous wastes referred to in 40 C.F.R. Part 268, which is incorporated by reference at WAC 173-303-140(2).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-610 Closure and post-closure.** (1) Applicability.

(a) Subsections (2) through (6) of this section, (which concern closure), apply to the owners and operators of all dangerous waste facilities.

(b) Subsections (7) through (11) of this section, (which concern post-closure care), apply to the owners and operators of all regulated units (as defined in WAC 173-303-040) at which dangerous waste will remain after closure, to tank systems that are required under WAC 173-303-640(8) to meet the requirements of landfills, to surface impoundments, waste piles, and miscellaneous units as specified in WAC 173-303-650(6), 173-303-660(9), and 173-303-680(4), respectively; to containment buildings that are required under 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695) to meet the requirements for landfills; and, unless otherwise authorized by the department, to the owners and operators of all facilities which, at closure, cannot meet the removal or decontamination limits specified in subsection (2)(b) of this section.

(c) Owners and operators of off-site recycling facilities subject to WAC 173-303-120 (3) or (4), and off-site used oil

processors subject to regulation under WAC 173-303-515(9) are subject to:

(i) WAC 173-303-610(2) Closure performance standard; and

(ii) WAC 173-303-610(12) Off-site recycling and used oil processor closure plans.

(d) For the purposes of the closure and post-closure requirements, any portion of a facility which closes is subject to the applicable closure and post-closure standards even if the rest of the facility does not close and continues to operate.

(e) Except for subsection (2)(a) of this section, the director may, in an enforceable document, replace all or part of the requirements of this section and the unit-specific requirements referenced in subsection (2)(b) of this section with alternative requirements when ~~((he or she))~~ they determine~~((s))~~:

(i) A dangerous waste unit is situated among other solid waste management units or areas of concern, a release has occurred, and both the dangerous waste unit and one or more of the solid waste management units or areas of concern are likely to have contributed to the release; and

(ii) It is not necessary to apply the requirements of this section (or the unit-specific requirements referenced in subsection (2)(b) of this section) because the alternative requirements will protect human health and the environment.

(2) Closure performance standard. The owner or operator must close the facility in a manner that:

(a)(i) Minimizes the need for further maintenance;

(ii) Controls, minimizes or eliminates to the extent necessary to protect human health and the environment, post-closure escape of dangerous waste, dangerous constituents, leachate, contaminated runoff, or dangerous waste decomposition products to the ground, surface water, groundwater, or the atmosphere; and

(iii) Returns the land to the appearance and use of surrounding land areas to the degree possible given the nature of the previous dangerous waste activity.

(b) Where the closure requirements of this section, or of WAC 173-303-630(10), 173-303-640(8), 173-303-650(6), 173-303-655(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680 (2) through (4), or 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695) call for the removal or decontamination of dangerous wastes, waste residues, or equipment, bases, liners, soils or other materials containing or contaminated with dangerous wastes or waste residue, then such removal or decontamination must assure that the levels of dangerous waste or dangerous waste constituents or residues do not exceed:

(i) For soils, groundwater, surface water, and air, the numeric cleanup levels calculated using unrestricted use exposure assumptions according to the Model Toxics Control Act Regulations, chapter 173-340 WAC as of the effective date or hereafter amended. Primarily, these will be numeric cleanup levels calculated according to MTCA Method B, although MTCA Method A may be used as appropriate, see WAC 173-340-700 through 173-340-760, excluding WAC 173-340-745; and

(ii) For all structures, equipment, bases, liners, etc., clean closure standards will be set by the department on a case-by-case basis in accordance with the closure performance stan-

dards of WAC 173-303-610 (2)(a)(ii) and in a manner that minimizes or eliminates post-closure escape of dangerous waste constituents.

(3) Closure plan; amendment of plan.

(a) The owner or operator of a dangerous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the dangerous waste at partial or final closure are required by WAC 173-303-650(6) and 173-303-660(9) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with WAC 173-303-806(4), and approved by the department as part of the permit issuance procedures under WAC 173-303-840. The approved closure plan will become a condition of any permit. The department's decision must assure that the approved closure plan is consistent with subsections (2), (3), (4), (5), and (6) of this section, and the applicable requirements of WAC 173-303-630(10), 173-303-640(8), 173-303-645, 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680(2), and 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695). A copy of the approved plan and all revisions to the plan must be furnished to the department upon request, including request by mail until final closure is completed and certified in accordance with subsection (6) of this section. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include at least:

(i) A description of how each dangerous waste management unit at the facility will be closed in accordance with subsection (2) of this section;

(ii) A description of how final closure of the facility will be conducted in accordance with subsection (2) of this section. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility;

(iii) An estimate of the maximum inventory of dangerous wastes ever on-site over the active life of the facility. (Any change in this estimate is a Class 1 modification with prior approval under WAC 173-303-830(4));

(iv) A detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all dangerous wastes, and identification of the type(s) of the off-site dangerous waste management units to be used, if applicable;

(v) A detailed description of the steps needed to remove or decontaminate all dangerous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(vi) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards,

including, but not limited to, groundwater monitoring, leachate collection, and run-on and runoff control;

(vii) A schedule for closure of each dangerous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each dangerous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all dangerous waste inventory and of the time required to place a final cover must be included.); and

(viii) For facilities that use trust funds to establish financial assurance under WAC 173-303-620 (4) or (6) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(ix) For facilities where the director has applied alternative requirements under subsection (1)(e) of this section, WAC 173-303-645 (1)(~~(e)~~) (f), or 173-303-620 (1)(d), the closure plan must include either the alternative requirements or a reference to the enforceable document that contains the alternative requirements.

(b) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in WAC 173-303-800 through 173-303-840. The written notification or request must include a copy of the amended closure plan for review or approval by the department.

(i) The owner or operator may submit a written notification or request to the department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(ii) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

(A) Changes in operating plans or facility design affect the closure plan; or

(B) There is a change in the expected year of closure, if applicable; or

(C) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan; or

(D) The owner/operator requests the director apply alternative requirements under subsection (1)(e) of this section, WAC 173-303-645 (1)(~~(e)~~) (f), or 173-303-620 (1)(d).

(iii) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than thirty days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all dangerous waste at closure and is not otherwise required to prepare a contingent closure plan under WAC 173-303-650(6) or 173-303-660(9), must submit an amended closure plan to the department no later than sixty days from the date

that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the requirements of WAC 173-303-665, or no later than thirty days from that date if the determination is made during partial or final closure. The department will approve, disapprove, or modify this amended plan in accordance with the procedures in WAC 173-303-800 through 173-303-840. The approved closure plan will become a condition of any permit issued.

(iv) The department may request modifications to the plan under the conditions described in (b)(ii) of this subsection. The owner or operator must submit the modified plan within sixty days of the department's request, or within thirty days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the department will be approved in accordance with the procedures in WAC 173-303-800 through 173-303-840.

(c) Notification of partial closure and final closure.

(i) The owner or operator must notify the department in writing at least sixty days prior to the date on which they expect to begin closure of a surface impoundment, waste pile, land treatment, or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the department in writing at least forty-five days prior to the date on which they expect to begin closure of a treatment or storage tank, container storage, or incinerator unit, or final closure of a facility with only such units.

(ii) The date when ~~(he)~~ they "expect(s) to begin closure" must be either:

(A) No later than thirty days after the date on which any dangerous waste management unit receives the known final volume of dangerous wastes or, if there is a reasonable possibility that the dangerous waste management unit will receive additional dangerous wastes, no later than one year after the date on which the unit received the most recent volume of dangerous waste. If the owner or operator of a dangerous waste management unit can demonstrate to the department that the dangerous waste management unit or facility has the capacity to receive additional dangerous wastes and ~~(he has)~~ they have taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the department may approve an extension to this one-year limit; or

(B) For units meeting the requirements of subsection (4)(d) of this section, no later than thirty days after the date on which the dangerous waste management unit receives the known final volume of nondangerous wastes, or if there is a reasonable possibility that the dangerous waste management unit will receive additional nondangerous wastes, no later than one year after the date on which the unit received the most recent volume of nondangerous wastes. If the owner or operator can demonstrate to the department that the dangerous waste management unit has the capacity to receive additional nondangerous wastes and ~~(he has)~~ they have taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the department may approve an extension to this one-year limit.

(iii) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order to cease receiving dangerous wastes or to close, then the requirements of (c) of this subsection do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in subsection (4) of this section.

(iv) Removal of wastes and decontamination or dismantling of equipment. Nothing in this subsection will preclude the owner or operator from removing dangerous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(4) Closure; time allowed for closure.

(a) Within ninety days after receiving the final volume of dangerous wastes, or the final volume of nondangerous wastes if the owner or operator complies with all applicable requirements in (d) and (e) of this subsection, at a dangerous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on site, all dangerous wastes in accordance with the approved closure plan. The department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that ~~((he has))~~ they have taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, and either:

(i) The activities required to comply with this paragraph will, of necessity, take longer than ninety days to complete; or

(ii)(A) The dangerous waste management unit or facility has the capacity to receive additional dangerous wastes, or has the capacity to receive nondangerous wastes if the owner or operator complies with (d) and (e) of this subsection;

(B) There is a reasonable likelihood that ~~((he))~~ they or another person will recommence operation of the dangerous waste management unit or the facility within one year; and

(C) Closure of the dangerous waste management unit or facility would be incompatible with continued operation of the site.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within one hundred eighty days after receiving the final volume of dangerous wastes, or the final volume of nondangerous wastes if the owner or operator complies with all applicable requirements in (d) and (e) of this subsection, at the dangerous waste management unit or facility. The department may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that ~~((he has))~~ they have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating dangerous waste management unit or facility, including compliance with all applicable permit requirements, and either:

(i) The partial or final closure activities will, of necessity, take longer than one hundred eighty days to complete; or

(ii)(A) The dangerous waste management unit or facility has the capacity to receive additional dangerous wastes, or

has the capacity to receive nondangerous wastes if the owner or operator complies with (d) and (e) of this subsection;

(B) There is reasonable likelihood that ~~((he))~~ they or another person will recommence operation of the dangerous waste management unit or the facility within one year; and

(C) Closure of the dangerous waste management unit or facility would be incompatible with continued operation of the site.

(c) The demonstrations referred to in (a)(i) and (ii) and (b)(i) and (ii) of this subsection must be made as follows: The demonstrations in (a)(i) and (ii) of this subsection must be made at least thirty days prior to the expiration of the specified ninety-day period; and the demonstration in (b)(i) and (ii) of this subsection must be made at least thirty days prior to the expiration of the specified one hundred eighty-day period unless the owner or operator is otherwise subject to the deadlines in (d) of this subsection.

(d) The department may allow an owner or operator to receive only nondangerous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of dangerous wastes at that unit if:

(i) The owner or operator requests a permit modification in compliance with all applicable requirements in WAC 173-303-830 and 40 C.F.R. Part 124 and in the permit modification request demonstrates that:

(A) The unit has the existing design capacity as indicated on the part A application to receive nondangerous wastes; and

(B) There is a reasonable likelihood that the owner or operator or another person will receive nondangerous wastes in the unit within one year after the final receipt of dangerous wastes; and

(C) The nondangerous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this part; and

(D) Closure of the dangerous waste management unit would be incompatible with continued operation of the unit or facility; and

(E) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(ii) The request to modify the permit includes an amended wastes analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plan, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of dangerous constituents in the nondangerous wastes, and changes in closure activities, including the expected year of closure if applicable under subsection (3)(a)(viii) of this section, as a result of the receipt of nondangerous wastes following the final receipt of dangerous wastes; and

(iii) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of nondangerous wastes following receipt of the final volume of dangerous wastes; and

(iv) The request to modify the permit and the demonstration referred to in (d)(i) and (ii) of this subsection are submit-

ted to the department no later than one hundred twenty days prior to the date on which the owner or operator of the facility receives the known final volume of dangerous wastes at the unit, or no later than ninety days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in (d) of this subsection, an owner or operator of a dangerous wastes surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004 (o)(1) and 3005 (j)(1) or 42 U.S.C. 3004 (o)(2) or (3) or 3005 (j)(2), (3), (4) or (13) must:

(i) Submit with the request to modify the permit:

(A) A contingent corrective measures plan, unless a corrective action plan has already been submitted under WAC 173-303-645(10); and

(B) A plan for removing dangerous wastes in compliance with (e)(ii) of this subsection; and

(ii) Remove all dangerous wastes from the unit by removing all dangerous liquids, and removing all dangerous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(iii) Removal of dangerous wastes must be completed no later than ninety days after the final receipt of dangerous wastes. The department may approve an extension to this deadline if the owner or operator demonstrates that the removal of dangerous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(iv) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters of constituents specified in the permit or that exceeds the facility's groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in WAC 173-303-645, the owner or operator of the unit:

(A) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by (e)(i) of this subsection no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(B) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(C) May be required by the department to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(v) During the period of corrective action, the owner or operator must provide semiannual reports to the department that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nondangerous wastes on the effectiveness of the corrective action.

(vi) The department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one

year as required in (e)(iv) of this subsection, or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

(vii) If the owner or operator fails to implement corrective measures as required in (e)(iv) of this subsection or if the department determines that substantial progress has not been made pursuant to (e)(vi) of this subsection the department will:

(A) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadline in (a) and (b) of this subsection and provide a detailed statement of reasons for this determination; and

(B) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than twenty days after the date of the notice.

(C) If the department receives no written comments, the decision will become final five days after the close of the comment period. The department will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within fifteen days of the final notice and that closure must begin in accordance with the deadlines in (a) and (b) of this subsection.

(D) If the department receives written comments on the decision, it will make a final decision within thirty days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the department determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in (a) and (b) of this subsection.

(E) The final determinations made by the department under (e)(vii)(C) and (D) of this subsection are not subject to administrative appeal.

(5) Disposal or decontamination of equipment, structures and soils. During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in WAC 173-303-640(8), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), or under the authority of WAC 173-303-680 (2) and (4). By removing any dangerous wastes or dangerous constituents during partial and final closure, the owner or operator may become a generator of dangerous waste and must handle that waste in accordance with all applicable requirements of WAC 173-303-170 through 173-303-230.

(6) Certification of closure. Within sixty days of completion of closure of each dangerous waste management unit (including tank systems and container storage areas), and within sixty days of the completion of final closure, the owner or operator must submit to the department by registered mail or other means that establish proof of receipt (including applicable electronic means), a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent qualified registered professional engineer. Documentation supporting the

independent qualified registered professional engineer's certification must be furnished to the department upon request until it releases the owner or operator from the financial assurance requirements for closure under WAC 173-303-620(4).

(7) Post-closure care and use of property.

(a) Post-closure care for each dangerous waste management unit subject to post-closure requirements must begin after completion of closure of the unit and continue for thirty years after that date and must consist of at least the following:

(i) Groundwater monitoring and reporting as required by WAC 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680; and

(ii) Maintenance and monitoring of waste containment systems as applicable.

(b) Any time preceding partial closure of a dangerous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the department may, in accordance with the permit modification procedures in WAC 173-303-800 through 173-303-840:

(i) Shorten the post-closure care period applicable to the dangerous waste management unit, or facility, if all disposal units have been closed, if it finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the dangerous waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the dangerous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the dangerous waste management unit or facility if it finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of dangerous waste at levels which may be harmful to human health and the environment).

(c) The department may require, at partial or final closure, continuation of any of the security requirements of WAC 173-303-310 during part or all of the post-closure period when:

(i) Dangerous wastes may remain exposed after completion of partial or final closure; or

(ii) Access by the public or domestic livestock may pose a hazard to human health.

(d) Post-closure use of property on or in which dangerous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(i) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(ii) Is necessary to reduce a threat to human health or the environment.

(e) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in subsection (8) of this section.

(8) Post-closure plan; amendment of plan.

(a) The owner or operator of a dangerous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and certain piles from which the owner or operator intends to remove or decontaminate the dangerous wastes at partial or final closure are required by WAC 173-303-650 and 173-303-660, respectively, to have written contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under WAC 173-303-650 or 173-303-660 must submit a post-closure plan to the department within ninety days from the date that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the post-closure requirements. The plan must be submitted with the permit application, in accordance with WAC 173-303-806, and approved by the department as part of the permit issuance procedures under WAC 173-303-840. The approved post-closure plan will become a condition of any permit issued.

(b) For each dangerous waste management unit subject to the requirements of this subsection, the post-closure plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

(i) A description of the planned groundwater monitoring activities and frequencies at which they will be performed;

(ii) A description of the planned maintenance activities, and frequencies at which they will be performed to comply with WAC 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680 during the post-closure care period, to ensure:

(A) The integrity of the cap and final cover or other containment structures in accordance with the requirements of 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680; and

(B) The function of the facility monitoring equipment;

(iii) The name, address, and phone number of the person or office to contact about the dangerous waste disposal unit or facility during the post-closure care period;

(iv) And, for facilities where the director has applied alternative requirements under subsection (1) (e) of this section, WAC 173-303-645 (1)((e)) (f) or 173-303-620 ((8)) (1)(d), the post-closure plan must include either the alternative requirements or a reference to the enforceable document that contains the alternative requirements.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the department upon request, including request by mail. After final closure has been certified, the person or office specified in (b)(iii) of this subsection must keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of WAC 173-303-800 through 173-303-840. The written notification or request must include a copy of the amended post-closure plan for review or approval by the department.

(i) The owner or operator may submit a written notification or request to the department for a permit modification to

amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(ii) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

(A) Changes in operating plans or facility design affect the approved post-closure plan; or

(B) There is a change in the expected year of final closure, if applicable; or

(C) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan; or

(D) The owner/operator requests the director to apply alternative requirements under subsection (1)(e) of this section, WAC 173-303-645 (1)(~~(e))~~ (f), or 173-303-620 (1)(d).

(iii) The owner or operator must submit a written request for a permit modification at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all dangerous waste at closure and is not otherwise required to submit a contingent post-closure plan under WAC 173-303-650 or 173-303-660 must submit a post-closure plan to the department no later than ninety days after the date that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the requirements of WAC 173-303-665. The department will approve, disapprove, or modify this plan in accordance with the procedures in WAC 173-303-800 through 173-303-840. The approved post-closure plan will become a permit condition.

(iv) The department may request modifications to the plan under the conditions described in (d)(ii) of this subsection. The owner or operator must submit the modified plan no later than sixty days after the department's request, or no later than ninety days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the department will be approved, disapproved, or modified in accordance with the procedures in WAC 173-303-800 through 173-303-840.

(9) Notice to local land authority. No later than the submission of the certification of closure of each dangerous waste disposal unit, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the department a survey plat indicating the location and dimensions of landfill cells or other dangerous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the dangerous waste disposal unit in accordance with the applicable requirements of this section. In addition, no later than sixty days after certification of closure of each dangerous waste disposal unit, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the

department, a record of the type, location, and quantity of dangerous wastes disposed of within each cell or other disposal unit of the facility. For wastes disposed of before November 19, 1980 (March 12, 1982, for facilities subject to this chapter but not subject to 40 C.F.R. Part 264), the owner or operator must identify the type, location, and quantity of the dangerous wastes to the best of (~~(his))~~ their knowledge and in accordance with any records (~~(he has))~~ they have kept.

(10) Notice in deed to property.

(a) No later than sixty days after certification of closure of each dangerous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the department a record of the type, location, and quantity of dangerous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes (as defined in WAC 173-303-040) disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the dangerous wastes to the best of (~~(his))~~ their knowledge and in accordance with any records (~~(he has))~~ they have kept.

(b) Within sixty days of certification of closure of the first dangerous waste disposal unit and within sixty days of certification of closure of the last dangerous waste disposal unit, the owner or operator must:

(i) Record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(A) The land has been used to manage dangerous wastes;

(B) Its use is restricted under this section; and

(C) The survey plat and record of the type, location, and quantity of dangerous wastes disposed of within each cell or other dangerous waste disposal unit of the facility required in subsection (9) of this section have been filed with the local zoning authority, or the authority with jurisdiction over local land use, and with the department; and

(ii) Submit a certification, signed by the owner or operator, that (~~(he has))~~ they have recorded the notation specified in (b)(i) of this subsection, including a copy of the document in which the notation has been placed, to the department.

(c) If the owner or operator or any subsequent owner of the land upon which a dangerous waste facility was located wishes to remove dangerous wastes and dangerous waste residues, the liner, if any, or contaminated soils, (~~(he))~~ they must request a modification to the post-closure permit in accordance with the applicable requirements in WAC 173-303-800 through 173-303-840. The owner or operator must demonstrate that the removal of dangerous wastes will satisfy the criteria of subsection (7)(d) of this section. By removing dangerous waste, the owner or operator may become a generator of dangerous waste and must manage it in accordance with all applicable requirements of this chapter. If (~~(he is))~~ they are granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the department approve either:

(i) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(ii) The addition of a notation to the deed or instrument indicating the removal of the dangerous waste.

(11) Certification of completion of post-closure care. No later than sixty days after completion of the established post-closure care period for each dangerous waste disposal unit, the owner or operator must submit to the department, by registered mail or other means that establish proof of receipt (including applicable electronic means), a certification that the post-closure care period for the dangerous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified registered professional engineer. Documentation supporting the independent qualified registered professional engineer's certification must be furnished to the department upon request until ~~((he))~~ they release~~((s))~~ the owner or operator from the financial assurance requirements for post-closure care under WAC 173-303-620(6).

(12) Off-site recycling and used oil processor closure plans. The owner or operator of an off-site recycling facility subject to regulation under WAC 173-303-120 (3), (4), or used oil processor or rerefiner subject to WAC 173-303-515(9) must have a written closure plan.

(a) Submittal. For new facilities, the closure plan must be submitted with the notification required under WAC 173-303-060. For existing facilities, the closure plan must be submitted within one hundred eighty days of the effective date of this regulation. For closure plans denied under (b) of this subsection that will be resubmitted, the amended plan must be resubmitted within ninety days after the owner or operator receives the denial.

(b) Review by department. Decision to approve or deny. Closure plans must be submitted to department for review, comment, approval or denial. The department decision to approve a closure plan must assure it is consistent with requirements in subsections (2) and (12) of this section. The department decision to deny a closure plan must be justified on the inability or unwillingness of the owner and operator to meet requirements in subsections (2) and (12) of this section or WAC 173-303-620 (1)(e). The department's decision may be appealed under the provisions of WAC 173-303-845.

(c) Availability. A copy of the approved closure plan and all updates to the plan must be maintained at the facility and furnished to the department upon request, including request by mail, until final closure is completed and certified in accordance with subsection (6) of this section.

(d) Contents of plan. The closure plan must identify steps necessary to perform final closure of recycling units at any point during its active life. The closure plan must include at least:

(i) An estimate of the maximum inventory of dangerous wastes or used oil ever on-site over the active life of the facility;

(ii) Descriptions, schedules, and disposal or decontamination procedures in subsections (3), (4), (5), (6) of this section, except any provisions dealing with permits, permit applications, modifications or approvals. The term "recycling unit" will replace the terms "dangerous waste management unit" or "regulated unit" in these subsections. Any references to permits or permit modifications in these subsections do not apply.

(e) Obligation to amend. At least sixty days prior to a major change at an off-site recycling or used oil processor/rerefining facility, the owners/operator of that facility must submit an amended closure plan. A major change may include the addition of a recycling or recovery process that is subject to WAC 173-303-120 (3) or (4), any increase in the maximum inventory of dangerous waste or used oil described in the previously approved closure plan, the closure of an existing recycling unit, or a change in ownership or operational control. The department must approve or deny, with justification, the revised closure plan. Refer to (a) of this subsection when a closure plan is denied if the closure plan needs to be resubmitted. Alternatively, the owner or operator may challenge the denial pursuant to WAC 173-303-845.

(f) Notification of closure. At least forty-five days prior to closure, an owner/operator must provide written notice to the department of intent to close.

(g) Relationship to closure plans for permitted facilities. A facility owner/operator that is subject to permitting and closure planning requirements for storage, treatment or disposal that is also required to prepare a closure plan for off-site recycling or used oil processing/rerefining, may satisfy the requirements of this subsection by combining all closure requirements in a single closure plan.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-620 Financial requirements.** (1) Applicability.

(a) The requirements of subsections (3), (4), (7), (8), (9), and (10) of this section, apply to owners and operators of all dangerous waste facilities, except as provided otherwise in this section.

(b) The requirements of subsections (5) and (6) of this section apply to owners and operators of:

(i) Dangerous waste disposal facilities;

(ii) Tank systems that are required under WAC 173-303-640(8) to meet the requirements of landfills;

(iii) Miscellaneous units as specified in WAC 173-303-680(4);

(iv) Waste piles and surface impoundments to the extent that WAC 173-303-650 and 173-303-660, respectively, require that such facilities comply with this section; and

(v) Containment buildings that are required under WAC 173-303-695 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this section.

(i) Operators of state or federally owned facilities are exempt from the requirements of this section, except subsections (3) and (5) of this section.

(ii) Operators of facilities ~~((who are under contract with (but not owned by) the state or federal government))~~ that are not state or federally owned must meet all of the requirements of this section, even if the facility is leased by or otherwise under contract with the state or federal government.

(d) The director may, in an enforceable document, replace all or part of the requirements of this section with alternative requirements for financial assurance when ~~((he or she))~~ they:

(i) (~~Applies~~) Apply alternative requirements for groundwater monitoring, closure or post-closure under WAC 173-303-610 (1)(e) or 173-303-645 (1)(~~e~~) (f); and

(ii) Determine(~~s~~) that it is not necessary to apply the requirements of this section because the alternative requirements will protect human health and the environment.

(e) Except as provided in (c) of this subsection, the requirements of subsections (3), (4), (8), (9) and (10) of this section apply to owners and operators of off-site recycling facilities and processors/rerefiners of used oil, except the term "recycling unit" will replace the terms "dangerous waste management unit" or "regulated unit."

(i) If the closure plan for an off-site recycling or used oil processing/rerefining facility has not been approved by the department within one year of submittal to the department, the department may determine the closure cost estimate and direct the facility to establish financial assurance in that amount. Note that the schedule for partially funded trust funds for existing facilities of WAC 173-303-620 (4)(c)(i) may apply.

(ii) Relationship to closure cost estimates and financial responsibility for permitted facilities. A facility owner/operator that is subject to closure cost estimating and financial responsibility requirements for dangerous waste management units and recycling unit may choose to consolidate those requirements into a single mechanism for submittal to the department.

(2) Definitions. As used in this section, the following listed or referenced terms have the meanings given below:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of WAC 173-303-610(3), or for off-site recycling or used oil processing facilities prepared in accordance with WAC 173-303-610(12);

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsection (3) of this section;

(c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with subsection (5) of this section;

(d) "Parent corporation" means a corporation which directly owns at least fifty percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation;

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of WAC 173-303-610 (7), (8), (9), and (10);

(f) "Regional administrator" means the department;

(g) "Hazardous waste" means dangerous waste; and

(h) The additional terms listed and defined in 40 C.F.R. 264.141 (f), (g), and (h) are incorporated by reference.

(3) Cost estimate for facility closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in WAC 173-303-610 (2) through (6), and applicable closure requirements in WAC 173-303-630(10), 173-303-640(5), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680 (2) through (4) and 173-303-695. The closure cost estimate:

(i) Must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see WAC 173-303-610 (3)(a));

(ii) Must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. On a case-by-case basis, the department may determine that a party that shares common ownership, a common parent corporation, or other higher-tier corporate ownership, may not qualify as a third party. (See definition of parent corporation in subsection (2)(d) of this section.) The owner or operator may use costs for on-site disposal if the guarantor can demonstrate that on-site disposal capacity will exist at all times over the life of the facility;

(iii) May not incorporate any salvage value that may be realized with the sale of dangerous wastes, or nondangerous wastes if applicable under WAC 173-303-610 (4)(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure;

Except that, off-site recyclers subject to WAC 173-303-120 (3) or (4), or off-site used oil processors subject to WAC 173-303-515(9) may exclude the estimated value for certain types of recyclable materials from the estimated cost of closing a recycling unit. This exclusion may include dangerous wastes or used oil held in tanks or containers that are dedicated solely to the management of recyclable materials that will require only incidental processing prior to producing a product that may be sold to the general public. Incidental processing may include simple screening or filtering to remove minor amounts of foreign material or removal of less than five percent water by volume;

(iv) May not incorporate a zero cost for dangerous wastes, or nondangerous wastes if applicable under WAC 173-303-610 (4)(d), that might have economic value; and

(v) May not be reduced for "net present value," "present discounted value," or other adjustments.

(b) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in (c)(i) and (ii) of this subsection.

(c) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with this section. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before submission of updated information to the department as specified in subsection (4) of this section. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent *Implicit Price Deflator for Gross National Product or Gross Domestic Product* as published by the United States Department of Commerce in its survey of current business. The inflation

factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(i) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(d) During the operating life of the facility, the owner or operator must keep at the facility the latest closure cost estimate prepared in accordance with (a) and (b) of this subsection, and, when this estimate has been adjusted in accordance with (c) of this subsection, the latest adjusted closure cost estimate.

(4) Financial assurance for facility closure.

(a) An owner or operator of a TSD, or off-site recycling or used oil processing/rerefining facility must establish financial assurance for closure of the facility. The owner or operator must choose from the following options or combination of options:

(i) Closure trust fund;

(ii) Surety bond guaranteeing payment into a closure trust fund;

(iii) Surety bond guaranteeing performance of closure;

(iv) Closure letter of credit;

(v) Closure insurance; or

(vi) Financial test and/or corporate guarantee for closure.

(b) In satisfying the requirements of financial assurance for facility closure in this subsection, the owner or operator must meet all the requirements for the mechanisms listed above as set forth in 40 C.F.R. 264.143 which are incorporated by reference. If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state.

(c) An owner or operator of an off-site recycling or used oil processing/rerefining facility may also meet the requirements of this subsection through the use of an assigned security deposit held in a Washington state bank. This mechanism is not available to an owner or operator of a TSD.

(i) The department will establish minimum standards for the assigned security deposit mechanism. These standards will include, but are not limited to, the language to be used in the assignment form. Copies of the assignment forms will be available from the department.

(ii) The department is not required to accept an assigned security deposit that does not meet the established minimum standards.

(d) 40 C.F.R. 264.143 is modified by the following requirements:

(i) Partially funded trust funds of 264.143 (a)(3) may not be accepted as a mechanism for a closure trust fund for TSDs. Owners and operators of existing used oil and recycling units that become subject to this section may establish a partially funded closure trust fund with a pay-in period of five years. The fund must be fully funded no later than five years (and the first, second, third, fourth, and fifth payments due no later than one, two, three, four, and five year(s) respectively) after

the date of the department's approval of the closure plan under WAC 173-303-610 (12)(b);

(ii) Insurance companies providing closure coverage must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best;

(iii) Ecology must be named as secondary beneficiary on an insurance policy;

(iv) Facility owners/operators and corporate guarantors requesting the use of the financial test or corporate guarantee must meet a minimum tangible net worth criterion of twenty-five million dollars;

(v) Facility owners/operators and corporate guarantors requesting the use of the financial test or corporate guarantee are not required to submit a "negative assurance" report, such as the one detailed in 40 C.F.R. 264.143 (f)(3)(iii). A financial test or corporate guarantee submission must instead include a CPA report based on an "Agreed Upon Procedures" engagement that complies with the American Institute of Certified Public Accountants' "Statement on Auditing Standards No. 75, Engagements to apply Agreed-Upon Procedures to Specific Elements, Accounts or Items of a Financial Statement" or any subsequent equivalent document from AICPA. This report must describe the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(e) Owners and operators of off-site recycling facilities regulated under WAC 173-303-120 (3) or (4), or used oil processing/rerefining facilities regulated under WAC 173-303-515(9), must demonstrate financial assurance for closure of the facility or recycling units. In addition to the requirements of 40 C.F.R. 264.143, as amended by this subsection, the financial assurance must meet the following requirements:

(i) For existing facilities choosing a surety bond guaranteeing payment, surety bond guaranteeing performance, letter of credit, insurance, financial test, corporate guarantee, or assigned security deposit, the mechanism must be established within thirty-six months of the effective date of this section;

(ii) Owners and operators of existing facilities choosing a partially funded trust fund mechanism must establish a fully funded trust fund within sixty months of approval of the closure plan by the department (see (c)(i) of this subsection);

(iii) For new facilities, financial assurance must be established and submitted to the department at least sixty days prior to the acceptance of the first shipment of wastes.

(f) Owners and operators of off-site recycling facilities regulated under WAC 173-303-120 (3) or (4), or used oil processing/rerefining facilities regulated under WAC 173-303-515(9) may request an alternative mechanism for financing the closure of recycling units that is determined by the department to be equivalent to one of the methods listed in (a) of this subsection. This may include any alternative mechanism as may be established through action by the Washington state legislature. An assigned security deposit that meets the department's standards is an equivalent alternative mechanism within the meaning of this section.

(g) The amount of financial assurance for closure must not be less than the facility's current closure cost estimate.

Financial assurance amounts, regardless of mechanism, may not be reduced for "net present value," "present discounted value," or other adjustments.

(5) Cost estimate for post-closure monitoring and maintenance.

(a) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in WAC 173-303-610 (7) through (10), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), and 173-303-680(4). The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. On a case-by-case basis, the department may determine that a party that shares common ownership, a common parent corporation, or other higher-tier corporate ownership may not qualify as a third party. (See definition of parent corporation in subsection (2)(d) of this section.) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required by WAC 173-303-610.

(b) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within thirty days after the department has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in (c)(i) and (ii) of this subsection.

(c) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subsection (6) of this section. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in subsection (6) of this section. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent *Implicit Price Deflator for Gross National Product* or *Gross Domestic Product* as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(i) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(d) During the operating life of the facility, the owner or operator must keep at the facility the latest post-closure cost estimate prepared in accordance with (a) and (b) of this subsection, and, when this estimate has been adjusted in accordance with (c) of this subsection, the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure monitoring and maintenance.

(a) An owner or operator of a facility subject to post-closure monitoring or maintenance requirements must establish financial assurance for post-closure care in accordance with the approved post-closure care plan. The owner or operator must choose from the following options or combination of options:

(i) Post-closure trust fund, except that the use of partially funded trust funds, as provided in 40 C.F.R. 264.145(a), will not be allowed by the department;

(ii) Surety bond guaranteeing payment into a post-closure trust fund;

(iii) Surety bond guaranteeing performance of post-closure care;

(iv) Post-closure letter of credit;

(v) Post-closure insurance; however, financial or insurance institutions providing such insurance must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best; or

(vi) Financial test and/or corporate guarantee for post-closure care, except that the criterion for minimum tangible net worth in 40 C.F.R. 264.145(f) must be in an amount of at least twenty-five million dollars;

(vii) Facility owners/operators and corporate guarantors requesting the use of the financial test or corporate guarantee are not required to submit a "negative assurance" report, such as the one detailed in 40 C.F.R. 264.145 (f)(3)(iii). A financial test or corporate guarantee submission must instead include a CPA report based on an "Agreed Upon Procedures" engagement that complies with the American Institute of Certified Public Accountants' "Statement on Auditing Standards No. 75, Engagements to apply Agreed-Upon Procedures to Specific Elements, Accounts or Items of a Financial Statement" or any subsequent equivalent document from AICPA. This report must describe the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(b) In satisfying the requirements of financial assurance for facility post-closure care in this subsection, the owner or operator must meet all the requirements set forth in 40 C.F.R. 264.145 which are incorporated by reference. If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state.

(c) The amount of financial assurance for post-closure must not be less than the facility's current post-closure cost estimate. Financial assurance amounts, regardless of mechanism, may not be reduced for "net present value," "present discounted value," or other adjustments.

(7) Use of a mechanism for financial assurance of both closure and post-closure care. An owner or operator may satisfy the requirements for financial assurance for both closure

and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 40 C.F.R. 264.143 and 264.145 which are incorporated by reference. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

(8) Liability requirements.

(a) An owner or operator of a TSD facility, off-site recycling or used oil processing/re-refining facility, or a group of such facilities must demonstrate financial responsibility for bodily injury and property damages to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(a), which is incorporated by reference, with the following additional requirements:

(i) The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least two million dollars per occurrence with an annual aggregate of at least four million dollars, exclusive of legal defense costs. For facilities that meet the criteria listed in 40 C.F.R. 264.147(b), the owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of five million dollars per occurrence with an annual aggregate of ten million dollars, exclusive of legal defense costs.

(ii) Insurance companies providing liability coverage must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best;

(iii) The department may file claims against liability insurance when contamination occurs as a result of releases or discharges of dangerous wastes or used oil from recycling units subject to regulation under this section to waters of the state as defined under chapter 90.48 RCW;

(iv) Facility owners/operators and corporate guarantors requesting the use of the financial test and corporate guarantee must meet a minimum tangible net worth criterion of twenty-five million dollars.

(b) An owner or operator of a facility with a regulated unit or units (as defined in WAC 173-303-040) or a disposal miscellaneous unit or units used to manage dangerous waste or a group of such facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(b), 264.147 (f), (g), (h), (i), and (j) which are incorporated by reference.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the department that the levels of financial responsibility required by (a) or (b) of this subsection are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may

obtain a variance from the department. The request for a variance must be submitted to the department as part of the application under WAC 173-303-806(4) for a facility that does not have a permit, or pursuant to the procedures for permit modification under WAC 173-303-830 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the department to determine a level of financial responsibility other than that required by (a) or (b) of this subsection. Any request for a variance for a permitted facility will be treated as a request for a permit modification under WAC 173-303-830.

(d) Adjustments by the department. If the department determines that the levels of financial responsibility required by (a) or (b) of this subsection are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the department may adjust the level of financial responsibility required under (a) or (b) of this subsection as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that has no regulated units (as defined in WAC 173-303-040), it may require that the owner or operator of the facility comply with (b) of this subsection. An owner or operator must furnish to the department within a reasonable time, any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility that has a permit will be treated as a permit modification under WAC 173-303-830.

(e) Period of coverage. An owner or operator must continuously provide liability coverage for a facility as required by this subsection until certifications of closure of the facility, as specified in WAC 173-303-610(6), are received by the department.

(f) The following subsections are incorporated by reference: 40 C.F.R. section 264.147(f), Financial test for liability coverage, (g) Guarantee for liability coverage, (h) Letter of credit for liability coverage, (i) Surety bond for liability coverage, and (j) Trust fund for liability coverage.

(9) Incapacity of owners or operators, guarantor or financial institutions.

(a) An owner or operator must notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 40 C.F.R. 264.143(f) and 264.145(f) must make such a notification if the guarantor

is named as debtor, as required under the terms of the corporate guarantee (40 C.F.R. 264.151(h)).

(b) An owner or operator who fulfills the requirements of 40 C.F.R. 264.143, 264.145, or 264.147 (a) or (b) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within sixty days after such an event.

(10) Wording of the instruments. The financial instruments required by this section must contain the wording specified by 40 C.F.R. 264.151 which is incorporated by reference, except that:

(a) The words "regional administrator" and "environmental protection agency" must be replaced with the words Washington state department of ecology;

(b) The words "hazardous waste" must be replaced with the words "dangerous waste";

(c) Any other words specified by the department must be changed as necessary to assure financial responsibility of the facility in accordance with the requirements of this section; and

(d) Whenever 40 C.F.R. 264.151 requires that owners and operators notify several regional administrators of their financial obligations, the owner or operator must notify both the department and all regional administrators of regions that are affected by the owner or operator's financial assurance mechanisms.

Copies of the financial instruments with the appropriate word changes will be available from the department by June 30, 1984.

(11) Financial assurance requirements for corrective action sites are detailed in WAC 173-303-64620(5).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-630 Use and management of containers.** (1) Applicability. The regulations in this section apply to owners and operators of all dangerous waste facilities that store dangerous waste in containers (~~of dangerous waste~~).

(2) Condition of containers. If a container holding dangerous waste is not in good condition (e.g., severe corroding or rusting(;) or flaking or scaling, and/or apparent structural defects) or if it begins to leak, the owner or operator must transfer the dangerous waste from the container to a container that is in good condition or manage the waste in some other way that complies with the requirements of chapter 173-303 WAC. In addition, the owner or operator must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-360.

(3) Identification of containers. The owner or operator (~~must~~) storing dangerous waste in containers must do the following:

(a) Clearly label or mark containers (~~in a manner which adequately identifies the major risk(s)~~) with the words "Dan-

gerous Waste" or "Hazardous Waste" where the label or marking is legible from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height.

(b) Clearly label or mark containers with an indication of the hazards of the contents (example includes, but is not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be:

(i) Legible and/or recognizable from a distance of twenty-five feet or the lettering size is a minimum of one-half inch in height; and

(ii) Include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the contents of the containers for employees, emergency response personnel, waste handlers, and the public (~~((note: If there is already a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate). The owner or operator must~~)).

(c) Affix labels upon transfer of dangerous wastes from one container to another. The owner or operator must destroy or otherwise remove labels from the emptied container, unless the container will continue to be used for storing dangerous waste at the facility. ((The owner or operator must)

(d) Ensure that labels are not obscured, removed, or otherwise unreadable in the course of inspection required under WAC 173-303-320.

(4) Compatibility of waste with containers. The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the dangerous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(5) Management of containers.

(a) A container holding dangerous waste must always be closed, except when it is necessary to add or remove waste.

(b) A container holding dangerous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(c) A minimum thirty-inch (~~(separation is required between aisles of containers holding dangerous waste(s). A row of drums must be no more than two drums wide)~~) aisle space separation is required between rows of containers. A row of containers must be no more than two wide and allow for unobstructed inspection of each container.

(6) Inspections. (~~(At least weekly;)~~) The owner or operator must ((inspect)) conduct "weekly inspections" (as defined in WAC 173-303-040), of areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion, deterioration, or other factors. The owner or operator must keep ((an)) a written or electronic inspection log including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection.

(7) Containment.

(a) Container storage areas must have a containment system that is capable of collecting and holding spills and leaks. In addition to the necessary leak containment capacity,

uncovered storage areas must be capable of holding the additional volume that would result from the precipitation of a maximum twenty-five year storm of twenty-four hours duration. The containment system must:

(i) Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated rainfall until the collected material is detected and removed. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(ii) Be designed for positive drainage control (such as a locked drainage valve) to prevent release of contaminated liquids and so that uncontaminated precipitation can be drained promptly for convenience of operation. Spilled or leaked waste and accumulated precipitation must be removed from the containment system in as timely a manner as is necessary to prevent overflow; and

(iii) Have sufficient capacity to contain ten percent of the volume of all containers or the volume of the largest container, whichever is greater. Only containers holding free liquids, or holding wastes designated as F020, F021, F022, F023, F026, or F027 need to be considered in this determination.

(b) Run-on into the containment system must be prevented, unless the department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (a)(iii) of this subsection to accommodate any run-on which might enter the system.

(c) Storage areas that store containers holding only wastes that do not contain free liquids, do not exhibit either the characteristic of ignitability or reactivity as described in WAC 173-303-090 (5) or (7), and are not designated as F020, F021, F022, F023, F026, or F027, need not have a containment system as described in this subsection: Provided, That:

(i) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(ii) The containers are elevated or are otherwise protected from contact with accumulated liquids.

(d) The department may require owners and operators to protect their containers from the elements by means of a building or other protective covering if the department determines that such protection is necessary to prevent a release of waste or waste constituents due to the nature of the waste or design of the container. The building or other protective covering must allow adequate inspection under subsection (6) of this section.

(8) Special requirements for ignitable or reactive waste.

(a) Containers holding reactive waste exhibiting a characteristic specified in WAC 173-303-090 (7)(a)(vi), (vii) or (viii) must be stored in a manner equivalent to the separation distances for storage of explosives in the International Fire Code's "American Table of Distances for Storage of Explosives" Table 3304.5.2(2) or "Table of Separation Distances for Low Explosives" Table 3304.5.2(3), 2003) Code, 2015 edition, or the version adopted by the local fire district.

(b) The owner or operator must design, operate, and maintain ignitable waste and reactive waste (other than a reactive waste which must meet (a) of this subsection) container storage in a manner equivalent with the International Fire Code. Where no specific standard or requirements are specified in the International Fire Code, or in existing state or local fire codes, applicable sections of the NFPA (~~Pamphlet #~~)30(6) "Flammable and Combustible Liquids Code," must be used. The owner/operator must also comply with the requirements of WAC 173-303-395 (1)(d).

(9) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials must not be placed in the same container, unless WAC 173-303-395 (1)(b) is complied with.

(b) Dangerous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(c) A storage container holding a dangerous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. Containment systems for incompatible wastes must be separate.

(10) Closure. At closure, all dangerous waste and dangerous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with dangerous waste or dangerous waste residues must be decontaminated or removed.

(11) Air emission standards. The owner or operator must manage all hazardous waste placed in a container in accordance with the applicable requirements of 40 C.F.R. Subparts AA, BB, and CC, which are incorporated by reference at WAC 173-303-690 through 173-303-692.

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-640 Tank systems.** (1) Applicability.

(a) The regulations in WAC 173-303-640 apply to owners and operators of facilities that use tank systems to treat or store dangerous waste, except as (b), (c), and (d) of this subsection provides otherwise.

(b) Tank systems that are used to store or treat dangerous waste which contain no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in subsection (4) of this section. To demonstrate the absence or presence of free liquids in the stored/treated waste, the Paint Filter Liquids Test Method 9095B described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" EPA Publication SW-846 as incorporated by reference at WAC 173-303-110 (3)(a) must be used.

(c) Tank systems, including sumps, as defined in WAC 173-303-040, that serve as part of a secondary containment system to collect or contain releases of dangerous wastes are exempted from the requirements in subsection (4)(a) of this section.

(d) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in

WAC 173-303-040 and regulated under WAC 173-303-675, must meet the requirements of this section.

(2) Assessment of existing tank system's integrity.

(a) For each existing tank system, the owner or operator must determine that the tank system is not leaking or is ~~(unfit)~~ fit for use. Except as provided in (b) of this subsection, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified registered professional engineer, in accordance with WAC 173-303-810 (13)(a), that attests to the tank system's integrity by January 12, 1988, for underground tanks that do not meet the requirements of subsection (4) of this section and that cannot be entered for inspection, or by January 12, 1990, for all other tank systems.

(b) Tank systems that store or treat materials that become dangerous wastes subsequent to January 12, 1989, must conduct this assessment within twelve months after the date that the waste becomes a dangerous waste.

(c) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(i) Design standard(s), if available, according to which the tank system was constructed;

(ii) Dangerous characteristics of the waste(s) that have been and will be handled;

(iii) Existing corrosion protection measures;

(iv) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(v) Results of a leak test, internal inspection, or other tank system integrity examination such that:

(A) For nonenterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

(B) For other than nonenterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, registered professional engineer, in accordance with WAC 173-303-810 (13)(a), that addresses cracks, leaks, corrosion, and erosion.

Note: Three publications may be used, where applicable, as guidelines in conducting other than a leak test: *Tank Inspection, Repair, Alteration, and Reconstruction*, API Standard 653, Fourth Edition, April 2009; *Guidance for Assessing and Certifying Tank Systems that Store and Treat Dangerous Waste*, Ecology Publication No. 94-114; and *Steel Tank Institute publication #SP001-05 Standard for the Inspection of Aboveground Storage Tanks* 5th Edition, revised September 2011.

(d) If, as a result of the assessment conducted in accordance with (a) of this subsection, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of subsection (7) of this section.

(e) The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank to ensure that the tank retains its structural integrity and will not collapse, rupture, or fail. The schedule must be based on the results of past integrity assessments, age of the tank system,

materials of construction, characteristics of the waste, and any other relevant factors.

(3) Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain (and for facilities that are pursuing or have obtained a final status permit, submit to the department, at time of submittal of Part B information) a written assessment, reviewed and certified by an independent, qualified registered professional engineer, in accordance with WAC 173-303-810 (13)(a), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of dangerous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment (which will be used by the department to review and approve or disapprove the acceptability of the tank system design at facilities which are pursuing or have obtained a final status permit) must include, at a minimum, the following information:

(i) Design standard(s) according to which tank system(s) are constructed;

(ii) Dangerous characteristics of the waste(s) to be handled;

(iii) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(A) Factors affecting the potential for corrosion, including but not limited to:

(I) Soil moisture content;

(II) Soil pH;

(III) Soil sulfides level;

(IV) Soil resistivity;

(V) Structure to soil potential;

(VI) Influence of nearby underground metal structures (e.g., piping);

(VII) Existence of stray electric current;

(VIII) Existing corrosion-protection measures (e.g., coating, cathodic protection); and

(B) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(I) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

(II) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(III) Electrical isolation devices such as insulating joints, flanges, etc.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

(iv) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(v) Design considerations to ensure that:

(A) Tank foundations will maintain the load of a full tank;

(B) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is either placed in a saturated zone, or is located less than five hundred feet from a fault which has had displacement in Holocene times; and

(C) Tank systems will withstand the effects of frost heave.

(b) The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank to ensure that the tank retains its structural integrity and will not collapse, rupture or fail. The schedule must be based on the results of past integrity assessments, age of the tank system, materials of construction, characteristics of the waste, and any other relevant factors.

(c) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(i) Weld breaks;

(ii) Punctures;

(iii) Scrapes of protective coatings;

(iv) Cracks;

(v) Corrosion;

(vi) Other structural damage or inadequate construction/installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(d) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(e) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(f) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

Note: The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems," or ANSI Standard B31.3, "Petroleum Refinery Piping," and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System," may be used, where applicable, as guidelines for proper installation of piping systems.

(g) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under (a)(iii) of this subsection, or other corrosion protection if the department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(h) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of (b) through (g) of this subsection, that attest that the tank system was properly designed and installed and that repairs, pursuant to (c) and (e) of this subsection, were performed. These written statements must also include the certification statement as required in WAC 173-303-810 (13)(a).

(4) Containment and detection of releases.

(a) In order to prevent the release of dangerous waste or dangerous constituents to the environment, secondary containment that meets the requirements of this subsection must be provided (except as provided in (f) and (g) of this subsection):

(i) For all new and existing tank systems or components, prior to their being put into service.

(ii) For tank systems that store or treat materials that become dangerous wastes, within two years of the dangerous waste listing, or when the tank system has reached fifteen years of age, whichever comes later.

(b) Secondary containment systems must be:

(i) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(ii) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of (b) of this subsection, secondary containment systems must be at a minimum:

(i) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, stress of installation, and the stress of daily operations (including stresses from nearby vehicular traffic);

(ii) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable

of preventing failure due to settlement, compression, or uplift;

(iii) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of dangerous waste or accumulated liquid in the secondary containment system within twenty-four hours, or at the earliest practicable time if the owner or operator can demonstrate to the department that existing detection technologies or site conditions will not allow detection of a release within twenty-four hours; and

(iv) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the department that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four hours.

Note: If the collected material is a dangerous waste under WAC 173-303-070, it is subject to management as a dangerous waste in accordance with all applicable requirements of WAC 173-303-170 through 173-303-400 and WAC 173-303-600 through 173-303-695. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a publicly owned treatment works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 C.F.R. Part 302.

(d) Secondary containment for tanks must include one or more of the following devices:

- (i) A liner (external to the tank);
- (ii) A vault;
- (iii) A double-walled tank; or
- (iv) An equivalent device as approved by the department.

(e) In addition to the requirements of (b), (c), and (d) of this subsection, secondary containment systems must satisfy the following requirements:

(i) External liner systems must be:

(A) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;

(B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event.

(C) Free of cracks or gaps; and

(D) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(ii) Vault systems must be:

(A) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;

(B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event;

(C) Constructed with chemical-resistant water stops in place at all joints (if any);

(D) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(E) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(I) Meets the definition of ignitable waste under WAC 173-303-090(5); or

(II) Meets the definition of reactive waste under WAC 173-303-090(7), and may form an ignitable or explosive vapor; and

(F) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(iii) Double-walled tanks must be:

(A) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(B) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(C) Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four hours, or at the earliest practicable time, if the owner or operator can demonstrate to the department, and the department concludes, that the existing detection technology or site conditions would not allow detection of a release within twenty-four hours.

Note: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of (b) and (c) of this subsection except for:

(i) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(ii) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(iii) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(iv) Pressurized aboveground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this subsection if the department finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with loca-

tion characteristics, will prevent the migration of any dangerous waste or dangerous constituents into the groundwater, or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with (g)(ii) of this subsection, be exempted from the secondary containment requirements of this section.

(i) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the department will consider:

- (A) The nature and quantity of the wastes;
- (B) The proposed alternate design and operation;
- (C) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater; and
- (D) All other factors that would influence the quality and mobility of the dangerous constituents and the potential for them to migrate to groundwater or surface water.

(ii) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the department will consider:

(A) The potential adverse effects on groundwater, surface water, and land quality taking into account:

(I) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

(II) The hydrogeological characteristics of the facility and surrounding land;

(III) The potential for health risks caused by human exposure to waste constituents;

(IV) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(V) The persistence and permanence of the potential adverse effects.

(B) The potential adverse effects of a release on groundwater quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow;

(II) The proximity and withdrawal rates of groundwater users;

(III) The current and future uses of groundwater in the area; and

(IV) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

(C) The potential adverse effects of a release on surface water quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow;

(II) The patterns of rainfall in the region;

(III) The proximity of the tank system to surface waters;

(IV) The current and future uses of surface waters in the area and any water quality standards established for those surface waters; and

(V) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality.

(D) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(I) The patterns of rainfall in the region; and

(II) The current and future uses of the surrounding land.

(iii) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of (g)(i) of this subsection, at which a release of dangerous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(A) Comply with the requirements of subsection (7) of this section, except subsection (7)(d) of this section; and

(B) Decontaminate or remove contaminated soil to the extent necessary to:

(I) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(II) Prevent the migration of dangerous waste or dangerous constituents to groundwater or surface water.

(C) If contaminated soil cannot be removed or decontaminated in accordance with (g)(iii)(B) of this subsection, comply with the requirements of subsection (8) of this section.

(iv) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of (g)(i) of this subsection, at which a release of dangerous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(A) Comply with the requirements of subsection (7)(a), (b), (c), and (d) of this section; and

(B) Prevent the migration of dangerous waste or dangerous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of subsection (8)(b) of this section; and

(C) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of (a) through (f) of this subsection or reapply for a variance from secondary containment and meet the requirements for new tank systems in subsection (3) of this section if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

(i) The department must be notified in writing by the owner or operator that ~~(he)~~ they intend~~(s)~~ to conduct and submit a demonstration for a variance from secondary containment as allowed in (g) of this subsection according to the following schedule:

(A) For existing tank systems, at least twenty-four months prior to the date that secondary containment must be provided in accordance with (a) of this subsection.

(B) For new tank systems, at least thirty days prior to entering into a contract for installation.

(ii) As part of the notification, the owner or operator must also submit to the department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in (g)(i) or (ii) of this subsection;

(iii) The demonstration for a variance must be completed within one hundred eighty days after notifying the department of an intent to conduct the demonstration; and

(iv) If a variance is granted under this subsection, the department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(i) For nonenterable underground tanks, a leak test that meets the requirements of subsection (2)(c)(v) of this section or other tank integrity method, as approved or required by the department, must be conducted at least annually.

(ii) For other than nonenterable underground tanks, the owner or operator must either conduct a leak test as in (i)(i) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified registered professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(iii) For ancillary equipment, a leak test or other integrity assessment as approved by the department must be conducted at least annually.

Note: Three publications may be used, where applicable, as guidelines for assessing the overall condition of the tank system: *Tank Inspection, Repair, Alteration, and Reconstruction*, API Standard 653, Fourth Edition, April 2009; *Guidance for Assessing and Certifying Tank Systems that Store and Treat Dangerous Waste*, Ecology Publication No. 94-114; and *Steel Tank Institute publication #SP001-05 Standard for the Inspection of Aboveground Storage Tanks* 5th Edition, revised September 2011.

(iv) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with (i)(i) through (iii) of this subsection.

(v) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in (i)(i) through (iii) of this subsection, the owner or operator must comply with the requirements of subsection (7) of this section.

(5) General operating requirements.

(a) Dangerous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(i) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(ii) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(iii) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of subsection (7) of this section if a leak or spill occurs in the tank system.

(d) All tank systems holding dangerous waste must be:

(i) Marked with labels or signs to identify the waste contained in the tank (The label or sign must be) legible at a distance of at least fifty feet (and must bear a legend which identifies the waste in a manner which adequately warns). For underground tank systems, labels or signs must be either placed on aboveground postings above each underground tank system or at each entrance to the active portion (area where the underground tank system is located).

(ii) Clearly marked or labeled with the words "Dangerous Waste" or "Hazardous Waste" legible at a distance of at least fifty feet, and for underground tank systems, the markings or labels must either be placed on aboveground postings above each underground tank system or at each entrance to the active portion (area where the underground tank/tank system is located).

(iii) Clearly marked or labeled with an indication of the hazards of the contents (example includes, but is not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes) legible at a distance of at least fifty feet. All hazard labels must include descriptive word(s) and/or pictogram(s) that identifies the hazards associated with the waste being stored or treated in the tank system(s) for the public, employees, emergency response personnel, and (the public of the major risk(s) associated with the waste being stored or treated in the tank system(s). (Note—If there already is a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate.)) waste handlers. For underground tank systems, markings or labels of the hazards of the contents of the tank system must either be placed on above-ground postings above each underground tank system, or at each entrance to the active portion (area where the underground tank system is located).

(e) All tank systems holding dangerous wastes which are acutely or chronically toxic by inhalation must be designed to prevent escape of vapors, fumes, or other emissions into the air.

## (6) Inspections.

(a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator must inspect at least once each operating day:

(i) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(ii) Data gathered from monitoring ~~((any))~~ and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(iii) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of dangerous waste (e.g., wet spots, dead vegetation).

Note: WAC 173-303-320 requires the owner or operator to remedy any deterioration or malfunction ~~((he))~~ they find~~((s))~~. Subsection (7) of this section requires the owner or operator to notify the department within twenty-four hours of confirming a leak. Also, 40 C.F.R. Part 302 may require the owner or operator to notify the National Response Center of a release.

(c) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(i) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(ii) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(d) The owner or operator must document in the operating record of the facility an inspection of those items in (a) through (c) of this subsection. The owner or operator must keep ~~((an))~~ a written or electronic inspection log including at least the date and time of the inspection, the printed name and the handwritten or electronic signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection.

(7) Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of dangerous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of waste from tank system or secondary containment system.

(i) If the release was from the tank system, the owner/operator must, within twenty-four hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of dangerous waste to the environment and to allow inspection and repair of the tank system to be performed.

(ii) If the material released was to a secondary containment system, all released materials must be removed within twenty-four hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The owner/operator must immediately conduct a visual inspection of the release and, based upon that inspection:

(i) Prevent further migration of the leak or spill to soils or surface water; and

(ii) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(i) Any release to the environment must be reported to the department and other authorities immediately in accordance with WAC 173-303-145. Any release above the "reportable quantity" must also be reported to the National Response Center pursuant to 40 C.F.R. Part 302.

(ii) Within thirty days (or fifteen days if classified as an emergency) of detection of a release to the environment, a report containing the following information must be submitted to the department:

(A) Likely route of migration of the release;

(B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(C) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available;

(D) Proximity to downgradient drinking water, surface water, and populated areas; and

(E) Description of response actions taken or planned.

(F) In the event of an emergency, additional information as required by WAC 173-303-360.

(e) Provision of secondary containment, repair, or closure.

(i) Unless the owner/operator satisfies the requirements of (e)(ii) through (iv) of this subsection, the tank system must be closed in accordance with subsection (8) of this section.

(ii) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(iii) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(iv) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with second-

ary containment that satisfies the requirements of subsection (4) of this section before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of (f) of this subsection are satisfied. If a component is replaced to comply with the requirements of this subitem, that component must satisfy the requirements for new tank systems or components in subsections (3) and (4) of this section. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with subsection (4) of this section prior to being returned to use.

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with (e) of this subsection, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with WAC 173-303-810 (13)(a) that the repaired system is capable of handling dangerous wastes without release for the intended life of the system. This certification must be submitted to the department within seven days after returning the tank system to use.

Note: See WAC 173-303-320 for the requirements necessary to remedy a failure. Also, 40 C.F.R. Part 302 may require the owner or operator to notify the National Response Center of certain releases.

#### (8) Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as dangerous waste, unless WAC 173-303-070 (2)(a) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in WAC 173-303-610 and 173-303-620.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in (a) of this subsection, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (see WAC 173-303-665(6)). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in WAC 173-303-610 and 173-303-620.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of subsection (4)(b) through (f) of this section and is not exempt from the secondary containment requirements in accordance with subsection (4)(g) of this section, then:

(i) The closure plan for the tank system must include both a plan for complying with (a) of this subsection and a contingent plan for complying with (b) of this subsection.

(ii) A contingent post-closure plan for complying with (b) of this subsection must be prepared and submitted as part of the permit application.

(iii) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under (a) of this subsection.

(iv) Financial assurance must be based on the cost estimates in (c)(iii) of this subsection.

(v) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under this chapter (WAC 173-303-610 and 173-303-620).

(9) Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in tank systems unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090, and 173-303-395 (1)(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(iii) The tank system is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in tanks must locate the tanks in a manner equivalent to the National Fire Protection Association's buffer zone requirements for tanks, contained in ~~((the publication NFPA 30))~~ NFPA 30 "Flammable and Combustible Liquids Code(~~(-2012))~~", or as required by state and local fire codes when such codes are more stringent. The owner or operator must also comply with the requirements of WAC 173-303-395 (1)(d).

(10) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless WAC 173-303-395 (1)(b) is complied with.

(b) Dangerous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless WAC 173-303-395 (1)(b) is complied with.

(11) Air emission standards. The owner or operator must manage all hazardous waste placed in a tank in accordance with the applicable requirements of 40 C.F.R. Subparts AA, BB, and CC, which are incorporated by reference at WAC 173-303-690 through 173-303-692.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-64610 Purpose and applicability.** (1) The provisions of this section, and WAC 173-303-64620 and 173-303-64630, establish requirements for corrective action for releases of dangerous wastes and dangerous constituents including releases from solid waste management units.

(2) The provisions of this section apply to facilities seeking or required to have a permit to treat, store, recycle or dispose of dangerous waste.

(3) The provisions of this section do not apply to cleanup-only facilities.

(4) For purposes of this section, dangerous constituent means any constituent identified in WAC 173-303-9905 or Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* which is incorporated at WAC 173-303-110 (3)(c), any constituent that caused a waste to be listed as a dangerous waste or to exhibit a dangerous characteristic under this chapter or to meet a dangerous waste criteria under this chapter, and any constituent that is within the meaning of "hazardous substance" under RCW 70.105D.020((7)) (13).

AMENDATORY SECTION (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-64620 Requirements.** (1) The owner or operator of a facility must institute corrective action as necessary to protect human health and the environment for all releases of dangerous wastes and dangerous constituents, including releases from all solid waste management units at the facility. Corrective action is required regardless of the time at which waste was managed at the facility or placed in such units and regardless of whether such facilities or units were intended for the management of solid or dangerous waste. Assurances of financial responsibility for such corrective action must be provided.

(2) The owner/operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment. Additionally, as necessary to protect human health and the environment, the department may require the owner/operator to implement on site measures to address releases which have migrated beyond the facility boundary. Assurances of financial responsibility for such corrective action must be provided.

(3) In the case of a facility seeking or required to have a permit under the provisions of chapter 173-303 WAC, corrective action must be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completion of such corrective action.

(4) At a minimum, corrective actions must be consistent with the following requirements of chapter 173-340 WAC.

(a) As necessary to select a cleanup action consistent with WAC 173-340-360, 173-340-350, state remedial investigation and feasibility study. Information that is adequate to support selection of a cleanup action consistent with WAC 173-340-360 but was developed under a different authority

(for example, as part of closure under WAC 173-303-610 or as part of a federally overseen cleanup) may be used.

(b) WAC 173-340-360, selection of cleanup actions.

(c) WAC 173-340-400, implementation of the cleanup action.

(d) WAC 173-340-410, compliance monitoring requirements.

(e) WAC 173-340-420, periodic review.

(f) WAC 173-340-440, institutional controls.

(g) WAC 173-340-700 through 173-340-760, cleanup standards.

(5) At a minimum, financial assurance for corrective actions as required in subsections (1) and (2) of this section must be consistent with the following requirements:

(a) States and the federal government are exempt from the requirements of this section.

(i) Operators of state or federally owned facilities are exempt from the requirements of this section, except (c), (f), and (g) of this subsection.

(ii) Operators of facilities (~~who are under contract with, but not owned by, the state or federal government~~) that are not state or federally owned must meet all of the requirements of this section, even if the facility is leased by or otherwise under contract with the state or federal government.

(b) Unless otherwise specified, the definitions and requirements for allowable financial assurance mechanisms as set forth in the current financial assurance rules covering closure and post-closure in this section and as incorporated by reference in 40 C.F.R. 264.141, 264.143, 264.145, and 264.151 will be the definitions and requirements for allowable financial assurance for corrective action purposes. The words "corrective action" are to be substituted for the words "closure," "post closure," "post-closure," or "postclosure" in the above listed regulations as needed to produce this result.

(c) Within thirty days from the effective date of a permit, agreed order or consent decree, the owner or operator shall submit to the department for review and approval a written cost estimate to cover the activities listed in the applicable Scope of Work and Schedule document(s). If the department rejects the cost estimate as submitted, the department shall provide to the owner or operator a revised cost estimate amount that will be the approved cost estimate.

(d) Within thirty days after the department's final approval of the owner or operator's cost estimate amount or the owner or operator's receipt of the department's approved cost estimate amount, the owner or operator shall establish and maintain continuous coverage of financial assurance in the amount of the approved cost estimate and submit the applicable financial assurance documentation. If the department does not accept, reject, or revise the owner or operator's cost estimate within sixty days after submittal, the cost estimate will be deemed approved for purposes of this section.

(e) Adjustments by the department. If the department determines that the timing or content of submission of cost estimates and financial assurance documents are not consistent with the degree and duration of risk associated with the corrective action activities, the department may adjust the level of financial assurance or timing of document submission required under this section as may be necessary to protect human health and the environment. This adjusted level or

timing will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from corrective action activities, it may require that the owner or operator of the facility comply with this section. An owner or operator must furnish to the department within a reasonable time, any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility that has a permit will be treated as a permit modification under WAC 173-303-830.

(f) If during the course of the corrective action activities the owner or operator is required to submit an additional work plan(s) under the applicable permit, agreed order or consent decree, or to conduct activities related to corrective action not previously part of the original cost estimate, the process outlined in (b) of this subsection shall apply in the submission process of an additional work plan(s) and the resulting additional cost estimate(s).

(g) All cost estimates must be based on the costs to the owner or operator of hiring a third party to complete the work and shall be in accordance with the requirements of WAC 173-303-620.

(h) The owner or operator shall annually adjust all cost estimates for inflation using the procedure outlined in WAC 173-303-620 (3)(c). However, the department may also allow a reduction in the owner or operator's cost estimate for corrective action work actually performed during the previous year.

(i) Acceptable financial assurance mechanisms are trust funds, surety bonds, letters of credit, insurance, the financial test, and the corporate guarantee, consistent with WAC 173-303-620. The department may allow other financial assurance mechanisms if they are consistent with the laws of Washington and if the owner or operator demonstrates to the satisfaction of the department that those mechanisms provide adequate financial assurance.

(j) If the owner or operator is using the financial test or corporate guarantee to meet its financial assurance obligation, the annual inflationary adjustment shall occur within ninety days after the close of the owner's or operator's fiscal year. If the owner or operator is using any mechanism other than the financial test or corporate guarantee, this adjustment shall occur each year within thirty days after the anniversary of the effective date of the permit, agreed order, consent decree, or alternative effective date pursuant to (d) of this subsection.

(k) If the owner or operator seeks to establish financial assurance by using a letter of credit or a surety bond, the owner or operator shall at the same time establish and thereafter maintain a standby trust fund acceptable to the department into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by the department pursuant to regulation.

(l) The owner or operator shall notify the department's site manager or project coordinator and the financial assur-

ance officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if it is named as debtor as required under the terms of the corporate guarantee.

(m) Once the owner or operator has established financial assurance with an acceptable mechanism as described above, the facility will be deemed to be without the required financial assurance:

(i) In the event of bankruptcy of the trustee or issuing institution; or

(ii) If the authority of the trustee institution to act as trustee has been suspended or revoked; or

(iii) If the authority of the institution issuing the surety bond, letter of credit, or insurance policy has been suspended or revoked.

In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the owner or operator must establish a replacement financial assurance mechanism by any means specified in WAC 173-303-620 or other financial instrument as approved by the department within sixty days after such an event.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-690 Air emission standards for process vents.** (1) Applicability.

(a) The regulations in this section apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.

(b) Except for 40 C.F.R. 264.1034 (d) and (e), this section applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(i) A unit that is subject to the permitting requirements of WAC 173-303-800 through 173-303-840; or

(ii) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of WAC 173-303-200((+)) (i.e., a hazardous waste recycling unit that is not a ninety-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of WAC 173-303-800 through 173-303-840; or

(iii) A unit that is exempt from permitting under the provisions of WAC 173-303-200((+)) (that is, a "ninety-day" tank or container) and is not a recycling unit under the provisions of WAC 173-303-120.

(c) For the owner and operator of a facility subject to this section and who received a final hazardous waste permit prior to December 6, 1996, the requirements of this section must be incorporated into the permit when the permit is reissued in accordance with the requirements of WAC 173-303-840(8) or reviewed in accordance with the requirements of WAC 173-303-806(11). Until such date when the owner and operator receive a final permit incorporating the requirements of

this section, the owner and operator are subject to the requirements of 40 C.F.R. 265 Subpart AA.

Note: The requirements of 40 C.F.R. Parts 264.1032 through 264.1036 apply to process vents on hazardous waste recycling units previously exempt under WAC 173-303-120 (4)(d). Other exemptions under WAC 173-303-071 and 173-303-600(2) are not affected by these requirements.

(d) The requirements of this section do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this section are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 C.F.R. Part 60, Part 61, or Part 63. The documentation of compliance under regulations at 40 C.F.R. Part 60, Part 61, or Part 63 must be kept with, or made readily available with, the facility operating record.

(2) 40 C.F.R. 264.1031 through 1036 (Subpart AA) is incorporated by reference.

Note: Where the incorporated language refers to 264.1030, refer to subsection (1) of this section. Where the incorporated language refers to Part 270, refer to WAC 173-303-800 through 173-303-840.

**AMENDATORY SECTION** (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

**WAC 173-303-691 Air emission standards for equipment leaks.** (1) Applicability.

(a) The regulations in this section apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.

(b) Except as provided in 40 C.F.R. 264.1064(k), this section applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(i) A unit that is subject to the permitting requirements of WAC 173-303-800 through 173-303-840; or

(ii) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of WAC 173-303-200((+)) (i.e., a hazardous waste recycling unit that is not a "ninety-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of WAC 173-303-800 through 173-303-840; or

(iii) A unit that is exempt from permitting under the provisions of WAC 173-303-200((+)) (i.e., a "ninety-day" tank or container) and is not a recycling unit under the provisions of WAC 173-303-120.

(c) For the owner or operator of a facility subject to the requirements of 40 C.F.R. 264.1052 through 264.1065 and who received a final permit under section 3005 of RCRA prior to December 6, 1996, the requirements of 40 C.F.R. 264.1052 through 264.1065 must be incorporated into the permit when the permit is reissued under WAC 173-303-840(8) or reviewed under WAC 173-303-806(11). Until such date when the owner or operator receives a final permit incorporating the requirements of 40 C.F.R. 264.1052 through 264.1065, the owner or operator is subject to the require-

ments of 40 C.F.R. 265, Subpart BB, which is incorporated by reference at WAC 173-303-400 (3)(a).

(d) Each piece of equipment to which this section applies must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of 40 C.F.R. 264.1052 to 264.1060 if it is identified as required in 40 C.F.R. 264.1064 (g)(5).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least ten percent by weight for less than three hundred hours per calendar year is excluded from the requirements of 40 C.F.R. Parts 264.1052 through 264.1060 if it is identified, as required in 40 C.F.R. Part 264.1064 (g)(6).

(g) Purged coatings and solvents from surface coating operations subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 C.F.R. Part 63, Subpart IIII, are not subject to the requirements of this section.

Note: The requirements of 40 C.F.R. Parts 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under WAC 173-303-120 (4)(d). Other exemptions under WAC 173-303-071 and 173-303-600(2) are not affected by these requirements.

(2) 40 C.F.R. 264.1051 through 1065 (Subpart BB) is incorporated by reference.

Note: Where the incorporated language refers to 264.1050, refer to WAC 173-303-691. Where the incorporated language refers to Part 270, refer to WAC 173-303-800 through 173-303-840.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-9903 Discarded chemical products list.**

Discarded Chemical Products List  
"P" Chemical Products

Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Dangerous Waste Number.

**The "P" wastes and their corresponding Dangerous Waste Numbers are:**

**Alphabetical List**

| Dangerous Waste No. | Chemical Abstracts No. | Substance                         |
|---------------------|------------------------|-----------------------------------|
| P023                | 107-20-0               | Acetaldehyde, chloro-             |
| P002                | 591-08-2               | Acetamide, N-(aminothioxomethyl)- |
| P057                | 640-19-7               | Acetamide, 2-fluoro-              |
| P058                | 62-74-8                | Acetic acid, fluoro-, sodium salt |
| P002                | 591-08-2               | 1-Acetyl-2-thiourea               |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| P003                | 107-02-8               | Acrolein   |
| P070                | 116-06-3               | Aldicarb   |
| P203                | 1646-88-4              | Aldicarb sulfone   |
| P004                | 309-00-2               | Aldrin   |
| P005                | 107-18-6               | Allyl alcohol  |
| P006                | 20859-73-8             | Aluminum phosphide (R,T)   |
| P007                | 2763-96-4              | 5-(Aminomethyl)-3-isoxazolol   |
| P008                | 504-24-5               | 4-Aminopyridine  |
| P009                | 131-74-8               | Ammonium picrate (R)   |
| P119                | 7803-55-6              | Ammonium vanadate  |
| P099                | 506-61-6               | Argentate(1-), bis(cyano-C)-, potassium  |
| P010                | 7778-39-4              | Arsenic acid H <sub>3</sub> AsO <sub>4</sub>   |
| P012                | 1327-53-3              | Arsenic oxide As <sub>2</sub> O <sub>3</sub>   |
| P011                | 1303-28-2              | Arsenic oxide As <sub>2</sub> O <sub>5</sub>   |
| P011                | 1303-28-2              | Arsenic pentoxide  |
| P012                | 1327-53-3              | Arsenic trioxide   |
| P038                | 692-42-2               | Arsine, diethyl-   |
| P036                | 696-28-6               | Arsonous dichloride, phenyl-   |
| P054                | 151-56-4               | Aziridine  |
| P067                | 75-55-8                | Aziridine, 2-methyl-   |
| P013                | 542-62-1               | Barium cyanide   |
| P024                | 106-47-8               | Benzenamine, 4-chloro-   |
| P077                | 100-01-6               | Benzenamine, 4-nitro-  |
| P028                | 100-44-7               | Benzene, (chloromethyl)-   |
| P042                | 51-43-4                | 1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-   |
| P046                | 122-09-8               | Benzeneethanamine, alpha,alpha-dimethyl-   |
| P014                | 108-98-5               | Benzenethiol   |
| P127                | 1563-66-2              | 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate   |
| P188                | 57-64-7                | Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) |
| P001                | 181-81-2               | 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%                         |
| P028                | 100-44-7               | Benzyl chloride  |
| P015                | 7440-41-7              | Beryllium powder   |
| P017                | 598-31-2               | Bromoacetone   |
| P018                | 357-57-3               | Brucine  |
| P045                | 39196-18-4             | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime  |
| P021                | 592-01-8               | Calcium cyanide  |
| P189                | 55285-14-8             | Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester   |
| P191                | 644-64-4               | Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]- 5-methyl- 1H-pyrazol-3-yl ester  |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P192                | 119-38-0               | Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester  |
| P190                | 1129-41-5              | Carbamic acid, methyl-, 3-methylphenyl ester  |
| P127                | 1563-66-2              | Carbofuran  |
| P021                | 592-01-8               | Calcium cyanide Ca(CN) <sub>2</sub>   |
| P022                | 75-15-0                | Carbon disulfide  |
| P189                | 55285-14-8             | Carbosulfan   |
| P095                | 75-44-5                | Carbonic dichloride   |
| P023                | 107-20-0               | Chloroacetaldehyde  |
| P024                | 106-47-8               | p-Chloroaniline   |
| P026                | 5344-82-1              | 1-(o-Chlorophenyl)thiourea  |
| P027                | 542-76-7               | 3-Chloropropionitrile   |
| P029                | 544-92-3               | Copper cyanide  |
| P029                | 544-92-3               | Copper cyanide Cu(CN)   |
| P202                | 64-00-6                | m-Cumenyl methylcarbamate   |
| P030                |                        | Cyanides (soluble cyanide salts), not otherwise specified   |
| P031                | 460-19-5               | Cyanogen  |
| P033                | 506-77-4               | Cyanogen chloride   |
| P033                | 506-77-4               | Cyanogen chloride (CN)Cl  |
| P034                | 131-89-5               | 2-Cyclohexyl-4,6-dinitrophenol  |
| P016                | 542-88-1               | Dichloromethyl ether  |
| P036                | 696-28-6               | Dichlorophenylarsine  |
| P037                | 60-57-1                | Dieldrin  |
| P038                | 692-42-2               | Diethylarsine   |
| P041                | 311-45-5               | Diethyl-p-nitrophenyl phosphate   |
| P040                | 297-97-2               | O,O-Diethyl O-pyrazinyl phosphorothioate  |
| P043                | 55-91-4                | Diisopropylfluorophosphate (DFP)  |
| P191                | 644-64-4               | Dimetilan   |
| P004                | 309-00-2               | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4beta,5alpha,8alpha,8beta)-   |
| P060                | 465-73-6               | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4beta,5beta,8beta,8beta)-   |
| P037                | 60-57-1                | 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2alpha,3beta,6beta,6aalpha,7beta, 7aalpha)-                |
| P051                | 172-20-8               | 2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2beta,3alpha,6alpha,6beta,7beta, 7aalpha)-, & metabolites |
| P044                | 60-51-5                | Dimethoate  |
| P046                | 122-09-8               | alpha,alpha-Dimethylphenethylamine  |
| P047                | 1534-52-1              | 4,6-Dinitro-o-cresol, & salts   |
| P048                | 51-28-5                | 2,4-Dinitrophenol   |
| P020                | 88-85-7                | Dinoseb   |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P085                | 152-16-9               | Diphosphoramidate, octamethyl-  |
| P111                | 107-49-3               | Diphosphoric acid, tetraethyl ester   |
| P039                | 298-04-4               | Disulfoton  |
| P049                | 541-53-7               | Dithiobiuret  |
| P185                | 26419-73-8             | 1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)-carbonyl]oxime              |
| P050                | 115-29-7               | Endosulfan  |
| P088                | 145-73-3               | Endothall   |
| P051                | 72-20-8                | Endrin  |
| P051                | 72-20-8                | Endrin, & metabolites   |
| P042                | 51-43-4                | Epinephrine   |
| P031                | 460-19-5               | Ethanedinitrile   |
| P194                | 23135-22-0             | Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester |
| P066                | 16752-77-5             | Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, methyl ester                         |
| P101                | 107-12-0               | Ethyl cyanide   |
| P054                | 151-56-4               | Ethyleneimine   |
| P097                | 52-85-7                | Famphur   |
| P056                | 7782-41-4              | Fluorine  |
| P057                | 640-19-7               | Fluoroacetamide   |
| P058                | 62-74-8                | Fluoroacetic acid, sodium salt  |
| P198                | 23422-53-9             | Formetanate hydrochloride   |
| P197                | 17702-57-7             | Formparanate  |
| P065                | 628-86-4               | Fulminic acid, mercury(2+) salt (R,T)   |
| P059                | 76-44-8                | Heptachlor  |
| P062                | 757-58-4               | Hexaethyl tetraphosphate  |
| P116                | 79-19-6                | Hydrazinecarbothioamide   |
| P068                | 60-34-4                | Hydrazine, methyl-  |
| P063                | 74-90-8                | Hydrocyanic acid  |
| P063                | 74-90-8                | Hydrogen cyanide  |
| P096                | 7803-51-2              | Hydrogen phosphide  |
| P060                | 465-73-6               | Isodrin   |
| P192                | 119-38-0               | Isolan  |
| P202                | 64-00-6                | 3-Isopropylphenyl N-methylcarbamate   |
| P007                | 2763-96-4              | 3(2H)-Isoxazolone, 5-(aminomethyl)-   |
| P196                | 15339-36-3             | Manganese, bis(dimethylcarbamodithioato-S,S')   |
| P196                | 15339-36-3             | Manganese dimethyldithiocarbamate   |
| P092                | 62-38-4                | Mercury, (acetato-O)phenyl-   |
| P065                | 628-86-4               | Mercury fulminate (R,T)   |
| P198                | 23422-53-9             | Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride  |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P197                | 17702-57-7             | Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]-              |
| P082                | 62-75-9                | Methanamine, N-methyl-N-nitroso-  |
| P064                | 624-83-9               | Methane, isocyanato-  |
| P016                | 542-88-1               | Methane, oxybis[chloro-   |
| P112                | 509-14-8               | Methane, tetranitro- (R)  |
| P118                | 75-70-7                | Methanethiol, trichloro-  |
| P050                | 115-29-7               | 6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide |
| P059                | 76-44-8                | 4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-                          |
| P199                | 2032-65-7              | Methiocarb  |
| P066                | 16752-77-5             | Methomyl  |
| P068                | 60-34-4                | Methyl hydrazine  |
| P064                | 624-83-9               | Methyl isocyanate   |
| P069                | 75-86-5                | 2-Methylactonitrile   |
| P071                | 298-00-0               | Methyl parathion  |
| P190                | 1129-41-5              | Metolcarb   |
| P128                | 315-18-4               | Mexacarbate   |
| P072                | 86-88-4                | alpha-Naphthylthiourea  |
| P073                | 13463-39-3             | Nickel carbonyl   |
| P073                | 13463-39-3             | Nickel carbonyl Ni(CO) <sub>4</sub> , (T-4)-  |
| P074                | 557-19-7               | Nickel cyanide  |
| P074                | 557-19-7               | Nickel cyanide Ni(CN) <sub>2</sub>  |
| P075                | 154-11-5               | Nicotine, & salts   |
| P076                | 10102-43-9             | Nitric oxide  |
| P077                | 100-01-6               | p-Nitroaniline  |
| P078                | 10102-44-0             | Nitrogen dioxide  |
| P076                | 10102-43-9             | Nitrogen oxide NO   |
| P078                | 10102-44-0             | Nitrogen oxide NO <sub>2</sub>  |
| P081                | 55-63-0                | Nitroglycerine (R)  |
| P082                | 62-75-9                | N-Nitrosodimethylamine  |
| P084                | 4549-40-0              | N-Nitrosomethylvinylamine   |
| P085                | 152-16-9               | Octamethylpyrophosphoramidate   |
| P087                | 20816-12-0             | Osmium oxide OsO <sub>4</sub> , (T-4)-  |
| P087                | 20816-12-0             | Osmium tetroxide  |
| P088                | 145-73-3               | 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid  |
| P194                | 23135-22-0             | Oxamyl  |
| P089                | 56-38-2                | Parathion   |
| P034                | 131-89-5               | Phenol, 2-cyclohexyl-4,6-dinitro-   |
| P128                | 315-18-4               | Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)                                |
| P199                | 2032-65-7              | Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate  |
| P048                | 51-28-5                | Phenol, 2,4-dinitro-  |
| P047                | 1534-52-1              | Phenol, 2-methyl-4,6-dinitro-, & salts  |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| P202                | 64-00-6                | Phenol, 3-(1-methylethyl)-, methyl carbamate                                   |
| P201                | 2631-37-0              | Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate                          |
| P020                | 88-85-7                | Phenol, 2-(1-methylpropyl)-4,6-dinitro-  |
| P009                | 131-74-8               | Phenol, 2,4,6-trinitro-, ammonium salt (R)                                     |
| P092                | 62-38-4                | Phenylmercury acetate  |
| P093                | 103-85-5               | Phenylthiourea   |
| P094                | 298-02-2               | Phorate  |
| P095                | 75-44-5                | Phosgene   |
| P096                | 7803-51-2              | Phosphine  |
| P041                | 311-45-5               | Phosphoric acid, diethyl 4-nitrophenyl ester                                   |
| P039                | 298-04-4               | Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester               |
| P094                | 298-02-2               | Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester                |
| P044                | 60-51-5                | Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester      |
| P043                | 55-91-4                | Phosphorofluoridic acid, bis(1-methylethyl) ester                              |
| P089                | 56-38-2                | Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester                      |
| P040                | 297-97-2               | Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester                            |
| P097                | 52-85-7                | Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester |
| P071                | 298-00-0               | Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester                     |
| P204                | 57-47-6                | Physostigmine  |
| P188                | 57-64-7                | Physostigmine salicylate   |
| P110                | 78-00-2                | Plumbane, tetraethyl-  |
| P098                | 151-50-8               | Potassium cyanide  |
| P098                | 151-50-8               | Potassium cyanide K(CN)  |
| P099                | 506-61-6               | Potassium silver cyanide   |
| P201                | 2631-37-0              | Promecarb  |
| P203                | 1646-88-4              | Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime        |
| P070                | 116-06-3               | Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime             |
| P101                | 107-12-0               | Propanenitrile   |
| P027                | 542-76-7               | Propanenitrile, 3-chloro-  |
| P069                | 75-86-5                | Propanenitrile, 2-hydroxy-2-methyl-  |
| P081                | 55-63-0                | 1,2,3-Propanetriol, trinitrate (R)   |
| P017                | 598-31-2               | 2-Propanone, 1-bromo-  |
| P102                | 107-19-7               | Propargyl alcohol  |
| P003                | 107-02-8               | 2-Propenal   |
| P005                | 107-18-6               | 2-Propen-1-ol  |
| P067                | 75-55-8                | 1,2-Propylenimine  |
| P102                | 107-19-7               | 2-Propyn-1-ol  |
| P008                | 504-24-5               | 4-Pyridinamine   |
| P075                | 154-11-5               | Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts                          |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| P204                | 57-47-6                | Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- |
| P114                | 12039-52-0             | Selenious acid, dithallium(1+) salt  |
| P103                | 630-10-4               | Selenourea   |
| P104                | 506-64-9               | Silver cyanide   |
| P104                | 506-64-9               | Silver cyanide Ag(CN)  |
| P105                | 26628-22-8             | Sodium azide   |
| P106                | 143-33-9               | Sodium cyanide   |
| P106                | 143-33-9               | Sodium cyanide Na(CN)  |
| P108                | 157-24-9               | Strychnidin-10-one, & salts  |
| P018                | 357-57-3               | Strychnidin-10-one, 2,3-dimethoxy-   |
| P108                | 157-24-9               | Strychnine, & salts  |
| P115                | 7446-18-6              | Sulfuric acid, dithallium(1+) salt   |
| P109                | 3689-24-5              | Tetraethyldithiopyrophosphate  |
| P110                | 78-00-2                | Tetraethyl lead  |
| P111                | 107-49-3               | Tetraethyl pyrophosphate   |
| P112                | 509-14-8               | Tetranitromethane (R)  |
| P062                | 757-58-4               | Tetraphosphoric acid, hexaethyl ester  |
| P113                | 1314-32-5              | Thallic oxide  |
| P113                | 1314-32-5              | Thallium oxide Tl <sub>2</sub> O <sub>3</sub>  |
| P114                | 12039-52-0             | Thallium(I) selenite   |
| P115                | 7446-18-6              | Thallium(I) sulfate  |
| P109                | 3689-24-5              | Thiodiphosphoric acid, tetraethyl ester  |
| P045                | 39196-18-4             | Thiofanox  |
| P049                | 541-53-7               | Thioimidodicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> NH                                     |
| P014                | 108-98-5               | Thiophenol   |
| P116                | 79-19-6                | Thiosemicarbazide  |
| P026                | 5344-82-1              | Thiourea, (2-chlorophenyl)-  |
| P072                | 86-88-4                | Thiourea, 1-naphthalenyl-  |
| P093                | 103-85-5               | Thiourea, phenyl-  |
| P185                | 26419-73-8             | Tirpate  |
| P123                | 8001-35-2              | Toxaphene  |
| P118                | 75-70-7                | Trichloromethanethiol  |
| P119                | 7803-55-6              | Vanadic acid, ammonium salt  |
| P120                | 1314-62-1              | Vanadium oxide V <sub>2</sub> O <sub>5</sub>   |
| P120                | 1314-62-1              | Vanadium pentoxide   |
| P084                | 4549-40-0              | Vinylamine, N-methyl-N-nitroso-  |
| P001                | 181-81-2               | Warfarin, & salts, when present at concentrations greater than 0.3%                                      |
| P205                | 137-30-4               | Zinc, bis(dimethylcarbamodithioato-S,S')   |
| P121                | 557-21-1               | Zinc cyanide   |
| P121                | 557-21-1               | Zinc cyanide Zn(CN) <sub>2</sub>   |
| P122                | 1314-84-7              | Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations greater than 10% (R,T)    |
| P205                | 137-30-4               | Ziram  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P001                | 181-81-2               | 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%            |
| P001                | 181-81-2               | Warfarin, & salts, when present at concentrations greater than 0.3%   |
| P002                | 591-08-2               | Acetamide, -(aminothioxomethyl)-  |
| P002                | 591-08-2               | 1-Acetyl-2-thiourea   |
| P003                | 107-02-8               | Acrolein  |
| P003                | 107-02-8               | 2-Propenal  |
| P004                | 309-00-2               | Aldrin  |
| P004                | 309-00-2               | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)- |
| P005                | 107-18-6               | Allyl alcohol   |
| P005                | 107-18-6               | 2-Propen-1-ol   |
| P006                | 20859-73-8             | Aluminum phosphide (R,T)  |
| P007                | 2763-96-4              | 5-(Aminomethyl)-3-isoxazolol  |
| P007                | 2763-96-4              | 3(2H)-Isoxazolone, 5-(aminomethyl)-   |
| P008                | 504-24-5               | 4-Aminopyridine   |
| P008                | 504-24-5               | 4-Pyridinamine  |
| P009                | 131-74-8               | Ammonium picrate (R)  |
| P009                | 131-74-8               | Phenol, 2,4,6-trinitro-, ammonium salt (R)  |
| P010                | 7778-39-4              | Arsenic acid H3 AsO4  |
| P011                | 1303-28-2              | Arsenic oxide As2 O5  |
| P011                | 1303-28-2              | Arsenic pentoxide   |
| P012                | 1327-53-3              | Arsenic oxide As2 O3  |
| P012                | 1327-53-3              | Arsenic trioxide  |
| P013                | 542-62-1               | Barium cyanide  |
| P014                | 108-98-5               | Benzenethiol  |
| P014                | 108-98-5               | Thiophenol  |
| P015                | 7440-41-7              | Beryllium powder  |
| P016                | 542-88-1               | Dichloromethyl ether  |
| P016                | 542-88-1               | Methane, oxybis(chloro-   |
| P017                | 598-31-2               | Bromoacetone  |
| P017                | 598-31-2               | 2-Propanone, 1-bromo-   |
| P018                | 357-57-3               | Brucine   |
| P018                | 357-57-3               | Strychnidin-10-one, 2,3-dimethoxy-  |
| P020                | 88-85-7                | Dinoseb   |
| P020                | 88-85-7                | Phenol, 2-(1-methylpropyl)-4,6-dinitro-   |
| P021                | 592-01-8               | Calcium cyanide   |
| P021                | 592-01-8               | Calcium cyanide Ca(CN)2   |
| P022                | 75-15-0                | Carbon disulfide  |
| P023                | 107-20-0               | Acetaldehyde, chloro-   |
| P023                | 107-20-0               | Chloroacetaldehyde  |
| P024                | 106-47-8               | Benzenamine, 4-chloro-  |
| P024                | 106-47-8               | p-Chloroaniline   |
| P026                | 5344-82-1              | 1-(o-Chlorophenyl)thiourea  |
| P026                | 5344-82-1              | Thiourea, (2-chlorophenyl)-   |
| P027                | 542-76-7               | 3-Chloropropionitrile   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P027                | 542-76-7               | Propanenitrile, 3-chloro-   |
| P028                | 100-44-7               | Benzene, (chloromethyl)-  |
| P028                | 100-44-7               | Benzyl chloride   |
| P029                | 544-92-3               | Copper cyanide  |
| P029                | 544-92-3               | Copper cyanide Cu(CN)   |
| P030                |                        | Cyanides (soluble cyanide salts), not otherwise specified   |
| P031                | 460-19-5               | Cyanogen  |
| P031                | 460-19-5               | Ethanedinitrile   |
| P033                | 506-77-4               | Cyanogen chloride   |
| P033                | 506-77-4               | Cyanogen chloride (CN)Cl  |
| P034                | 131-89-5               | 2-Cyclohexyl-4,6- dinitrophenol   |
| P034                | 131-89-5               | Phenol, 2-cyclohexyl-4,6-dinitro-   |
| P036                | 696-28-6               | Arsonous dichloride, phenyl-  |
| P036                | 696-28-6               | Dichlorophenylarsine  |
| P037                | 60-57-1                | Dieldrin  |
| P037                | 60-57-1                | 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2alpha,3beta,6beta,6alpha,7beta, 7alpha)- |
| P038                | 692-42-2               | Arsine, diethyl-  |
| P038                | 692-42-2               | Diethylarsine   |
| P039                | 298-04-4               | Disulfoton  |
| P039                | 298-04-4               | Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester   |
| P040                | 297-97-2               | O,O-Diethyl O-pyrazinyl phosphorothioate  |
| P040                | 297-97-2               | Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester   |
| P041                | 311-45-5               | Diethyl-p-nitrophenyl phosphate   |
| P041                | 311-45-5               | Phosphoric acid, diethyl 4-nitrophenyl ester  |
| P042                | 51-43-4                | 1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-  |
| P042                | 51-43-4                | Epinephrine   |
| P043                | 55-91-4                | Diisopropylfluorophosphate (DFP)  |
| P043                | 55-91-4                | Phosphorofluoric acid, bis(1-methyl-ethyl) ester  |
| P044                | 60-51-5                | Dimethoate  |
| P044                | 60-51-5                | Phosphorodithioic acid, O,O-dimethyl S-[2-(methyl amino)-2-oxoethyl] ester  |
| P045                | 39196-18-4             | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl]oxime  |
| P045                | 39196-18-4             | Thiofanox   |
| P046                | 122-09-8               | Benzeneethanamine, alpha, alpha-dimethyl-   |
| P046                | 122-09-8               | alpha, alpha-Dimethylphenethylamine   |
| P047                | 534-52-1               | 4,6-Dinitro-o-cresol, & salts   |
| P047                | 534-52-1               | Phenol, 2-methyl-4,6-dinitro-, & salts  |
| P048                | 51-28-5                | 2,4-Dinitrophenol   |
| P048                | 51-28-5                | Phenol, 2,4-dinitro-  |
| P049                | 541-53-7               | Dithiobiuret  |
| P049                | 541-53-7               | Thioimidodicarbonic diamide[(H2N)C(S)]2 NH  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P050                | 115-29-7               | Endosulfan  |
| P050                | 115-29-7               | 6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide  |
| P051                | 172-20-8               | 2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-, & metabolites |
| P051                | 72-20-8                | Endrin  |
| P051                | 72-20-8                | Endrin, & metabolites   |
| P054                | 151-56-4               | Aziridine   |
| P054                | 151-56-4               | Ethyleneimine   |
| P056                | 7782-41-4              | Fluorine  |
| P057                | 640-19-7               | Acetamide, 2-fluoro-  |
| P057                | 640-19-7               | Fluoroacetamide   |
| P058                | 62-74-8                | Acetic acid, fluoro-, sodium salt   |
| P058                | 62-74-8                | Fluoroacetic acid, sodium salt  |
| P059                | 76-44-8                | Heptachlor  |
| P059                | 76-44-8                | 4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-  |
| P060                | 465-73-6               | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,4abeta,5beta,8beta,8abeta)-                                     |
| P060                | 465-73-6               | Isodrin   |
| P062                | 757-58-4               | Hexaethyl tetraphosphate  |
| P062                | 757-58-4               | Tetraphosphoric acid, hexaethyl ester   |
| P063                | 74-90-8                | Hydrocyanic acid  |
| P063                | 74-90-8                | Hydrogen cyanide  |
| P064                | 624-83-9               | Methane, isocyanato-  |
| P064                | 624-83-9               | Methyl isocyanate   |
| P065                | 628-86-4               | Fulminic acid, mercury(2+) salt (R,T)   |
| P065                | 628-86-4               | Mercury fulminate (R,T)   |
| P066                | 16752-77-5             | Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, methyl ester   |
| P066                | 16752-77-5             | Methomyl  |
| P067                | 75-55-8                | Aziridine, 2-methyl-  |
| P067                | 75-55-8                | 1,2-Propyleneimine  |
| P068                | 60-34-4                | Hydrazine, methyl-  |
| P068                | 60-34-4                | Methyl hydrazine  |
| P069                | 75-86-5                | 2-Methylactonitrile   |
| P069                | 75-86-5                | Propanenitrile, 2-hydroxy-2-methyl-   |
| P070                | 116-06-3               | Aldicarb  |
| P070                | 116-06-3               | Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime  |
| P071                | 298-00-0               | Methyl parathion  |
| P071                | 298-00-0               | Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl)ester  |
| P072                | 86-88-4                | alpha-Naphthylthiourea  |
| P072                | 86-88-4                | Thiourea, 1-naphthalenyl-   |
| P073                | 13463-39-3             | Nickel carbonyl   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P073                | 13463-39-3             | Nickel carbonyl Ni(CO) <sub>4</sub> , (T-4)-                                  |
| P074                | 557-19-7               | Nickel cyanide  |
| P074                | 557-19-7               | Nickel cyanide Ni(CN) <sub>2</sub>  |
| P075                | 54-11-5                | Nicotine, & salts   |
| P075                | 154-11-5               | Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts                         |
| P076                | 10102-43-9             | Nitric oxide  |
| P076                | 10102-43-9             | Nitrogen oxide NO   |
| P077                | 100-01-6               | Benzenamine, 4-nitro-   |
| P077                | 100-01-6               | p-Nitroaniline  |
| P078                | 10102-44-0             | Nitrogen dioxide  |
| P078                | 10102-44-0             | Nitrogen oxide NO <sub>2</sub>  |
| P081                | 55-63-0                | Nitroglycerine (R)  |
| P081                | 55-63-0                | 1,2,3-Propanetriol, trinitrate (R)  |
| P082                | 62-75-9                | Methanamine, -methyl-N-nitroso-   |
| P082                | 62-75-9                | N-Nitrosodimethylamine  |
| P084                | 4549-40-0              | N-Nitrosomethylvinylamine   |
| P084                | 4549-40-0              | Vinylamine, -methyl-N-nitroso-  |
| P085                | 152-16-9               | Diphosphoramidate, octamethyl-  |
| P085                | 152-16-9               | Octamethylpyrophosphoramidate   |
| P087                | 20816-12-0             | Osmium oxide OsO <sub>4</sub> , (T-4)-  |
| P087                | 20816-12-0             | Osmium tetroxide  |
| P088                | 145-73-3               | Endothall   |
| P088                | 145-73-3               | 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid                              |
| P089                | 56-38-2                | Parathion   |
| P089                | 56-38-2                | Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl)ester                      |
| P092                | 62-38-4                | Mercury, (acetato-O)phenyl-   |
| P092                | 62-38-4                | Phenylmercury acetate   |
| P093                | 103-85-5               | Phenylthiourea  |
| P093                | 103-85-5               | Thiourea, phenyl-   |
| P094                | 298-02-2               | Phorate   |
| P094                | 298-02-2               | Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester                |
| P095                | 75-44-5                | Carbonic dichloride   |
| P095                | 75-44-5                | Phosgene  |
| P096                | 7803-51-2              | Hydrogen phosphide  |
| P096                | 7803-51-2              | Phosphine   |
| P097                | 52-85-7                | Famphur   |
| P097                | 52-85-7                | Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]O,O-dimethyl ester |
| P098                | 151-50-8               | Potassium cyanide   |
| P098                | 151-50-8               | Potassium cyanide K(CN)   |
| P099                | 506-61-6               | Argentate(1-), bis(cyano-C)-, potassium                                       |
| P099                | 506-61-6               | Potassium silver cyanide  |
| P101                | 107-12-0               | Ethyl cyanide   |
| P101                | 107-12-0               | Propanenitrile  |
| P102                | 107-19-7               | Propargyl alcohol   |
| P102                | 107-19-7               | 2-Propyn-1-ol   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P103                | 630-10-4               | Selenourea  |
| P104                | 506-64-9               | Silver cyanide  |
| P104                | 506-64-9               | Silver cyanide Ag(CN)   |
| P105                | 26628-22-8             | Sodium azide  |
| P106                | 143-33-9               | Sodium cyanide  |
| P106                | 143-33-9               | Sodium cyanide Na(CN)   |
| P108                | 157-24-9               | Strychnidin-10-one, & salts   |
| P108                | 157-24-9               | Strychnine, & salts   |
| P109                | 3689-24-5              | Tetraethyldithiopyrophosphate   |
| P109                | 3689-24-5              | Thiodiphosphoric acid,tetraethyl ester  |
| P110                | 78-00-2                | Plumbane, tetraethyl-   |
| P110                | 78-00-2                | Tetraethyl lead   |
| P111                | 107-49-3               | Diphosphoric acid, tetraethylester  |
| P111                | 107-49-3               | Tetraethyl pyrophosphate  |
| P112                | 509-14-8               | Methane, tetranitro-(R)   |
| P112                | 509-14-8               | Tetranitromethane (R)   |
| P113                | 1314-32-5              | Thallic oxide   |
| P113                | 1314-32-5              | Thallium oxide Tl2 O3   |
| P114                | 12039-52-0             | Selenious acid,dithallium(1+) salt  |
| P114                | 12039-52-0             | Thallium(I) selenite  |
| P115                | 7446-18-6              | Sulfuric acid, dithallium(1+) salt  |
| P115                | 7446-18-6              | Thallium(I) sulfate   |
| P116                | 79-19-6                | Hydrazinecarbothioamide   |
| P116                | 79-19-6                | Thiosemicarbazide   |
| P118                | 75-70-7                | Methanethiol, trichloro-  |
| P118                | 75-70-7                | Trichloromethanethiol   |
| P119                | 7803-55-6              | Ammonium vanadate   |
| P119                | 7803-55-6              | Vanadic acid, ammonium salt   |
| P120                | 1314-62-1              | Vanadium oxide V2O5   |
| P120                | 1314-62-1              | Vanadium pentoxide  |
| P121                | 557-21-1               | Zinc cyanide  |
| P121                | 557-21-1               | Zinc cyanide Zn(CN)2  |
| P122                | 1314-84-7              | Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)  |
| P123                | 8001-35-2              | Toxaphene   |
| P127                | 1563-66-2              | 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,methylcarbamate   |
| P127                | 1563-66-2              | Carbofuran  |
| P128                | 315-18-4               | Mexacarbate   |
| P128                | 315-18-4               | Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate(ester)   |
| P185                | 26419-73-8             | 1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime   |
| P185                | 26419-73-8             | Tirpate   |
| P188                | 57-64-7                | Benzoic acid, 2-hydroxy-,compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) |
| P188                | 57-64-7                | Physostigmine salicylate  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| P189                | 55285-14-8             | Carbamic acid,[(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester             |
| P189                | 55285-14-8             | Carbosulfan   |
| P190                | 1129-41-5              | Carbamic acid, methyl-, 3-methylphenyl ester  |
| P190                | 1129-41-5              | Metolcarb   |
| P191                | 644-64-4               | Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester                  |
| P191                | 644-64-4               | Dimetilan   |
| P192                | 119-38-0               | Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester                            |
| P192                | 119-38-0               | Isolan  |
| P194                | 23135-22-0             | Ethanimidthioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methylester           |
| P194                | 23135-22-0             | Oxamyl  |
| P196                | 15339-36-3             | Manganese,bis(dimethylcarbomodithioato-S,S')-,  |
| P196                | 15339-36-3             | Manganesedimethyldithiocarbamate  |
| P197                | 17702-57-7             | Formparanate  |
| P197                | 17702-57-7             | Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]-                    |
| P198                | 23422-53-9             | Formetanate hydrochloride   |
| P198                | 23422-53-9             | Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)-carbonyl]oxy]phenyl]-monohydrochloride           |
| P199                | 2032-65-7              | Methiocarb  |
| P199                | 2032-65-7              | Phenol, (3,5-dimethyl-4-(methylthio)-,methylcarbamate   |
| P201                | 2631-37-0              | Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate  |
| P201                | 2631-37-0              | Promecarb   |
| P202                | 64-00-6                | m-Cumenyl methylcarbamate   |
| P202                | 64-00-6                | 3-Isopropylphenyl N-methylcarbamate   |
| P202                | 64-00-6                | Phenol, 3-(1-methylethyl)-,methyl carbamate   |
| P203                | 1646-88-4              | Aldicarb sulfone  |
| P203                | 1646-88-4              | Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl]oxime                               |
| P204                | 57-47-6                | Physostigmine   |
| P204                | 57-47-6                | Pyrrolo[2,3-b]indol-5-ol,1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-,methylcarbamate (ester),(3aS-cis)- |
| P205                | 137-30-4               | Zinc, bis (dimethylcarbomodithioato-S,S')-,   |
| P205                | 137-30-4               | Ziram   |

FOOTNOTE: <sup>1</sup> CAS Number given for parent compound only.

"U" Chemical Products

Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Dangerous Waste Number.

**The "U" wastes and their corresponding Dangerous Waste Numbers are:**

**Alphabetical List**

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U394                | 30558-43-1             | A2213  |
| U001                | 75-07-0                | Acetaldehyde (I)   |
| U034                | 75-87-6                | Acetaldehyde, trichloro-   |
| U187                | 62-44-2                | Acetamide, N-(4-ethoxyphenyl)-   |
| U005                | 53-96-3                | Acetamide, N-9H-fluoren-2-yl-  |
| U240                | 194-75-7               | Acetic acid, (2,4-dichlorophenoxy)-, salts & esters  |
| U112                | 141-78-6               | Acetic acid ethyl ester (I)  |
| U144                | 301-04-2               | Acetic acid, lead(2+) salt   |
| U214                | 563-68-8               | Acetic acid, thallium(1+) salt   |
| See F027            | 93-76-5                | Acetic acid, (2,4,5-trichlorophenoxy)-   |
| U002                | 67-64-1                | Acetone (I)  |
| U003                | 75-05-8                | Acetonitrile (I,T)   |
| U004                | 98-86-2                | Acetophenone   |
| U005                | 53-96-3                | 2-Acetylaminofluorene  |
| U006                | 75-36-5                | Acetyl chloride (C,R,T)  |
| U007                | 79-06-1                | Acrylamide   |
| U008                | 79-10-7                | Acrylic acid (I)   |
| U009                | 107-13-1               | Acrylonitrile  |
| U011                | 61-82-5                | Amitrole   |
| U012                | 62-53-3                | Aniline (I,T)  |
| U136                | 75-60-5                | Arsinic acid, dimethyl-  |
| U014                | 492-80-8               | Auramine   |
| U015                | 115-02-6               | Azaserine  |
| U010                | 50-07-7                | Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[aminocarbonyl]oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha,8balph)]- |
| U280                | 101-27-9               | Barban   |
| U278                | 22781-23-3             | Bendiocarb   |
| U364                | 22961-82-6             | Bendiocarb phenol  |
| U271                | 17804-35-2             | Benomyl  |
| U157                | 56-49-5                | Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-  |
| U016                | 225-51-4               | Benz[c]acridine  |
| U017                | 98-87-3                | Benzal chloride  |
| U192                | 23950-58-5             | Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propenyl)-   |
| U018                | 56-55-3                | Benz[a]anthracene  |
| U094                | 57-97-6                | Benz[a]anthracene, 7,12-dimethyl-  |
| U012                | 62-53-3                | Benzenamine (I,T)  |

**Alphabetical List**

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U014                | 492-80-8               | Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-                                |
| U049                | 3165-93-3              | Benzenamine, 4-chloro-2-methyl-, hydrochloride                                  |
| U093                | 60-11-7                | Benzenamine, N,N-dimethyl-4-(phenylazo)-  |
| U328                | 95-53-4                | Benzenamine, 2-methyl-  |
| U353                | 106-49-0               | Benzenamine, 4-methyl-  |
| U158                | 101-14-4               | Benzenamine, 4,4'-methylenebis[2-chloro-  |
| U222                | 636-21-5               | Benzenamine, 2-methyl-, hydrochloride   |
| U181                | 99-55-8                | Benzenamine, 2-methyl-5-nitro-  |
| U019                | 71-43-2                | Benzene (I,T)   |
| U038                | 510-15-6               | Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester |
| U030                | 101-55-3               | Benzene, 1-bromo-4-phenoxy-   |
| U035                | 305-03-3               | Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-                              |
| U037                | 108-90-7               | Benzene, chloro-  |
| U221                | 25376-45-8             | Benzenediamine, ar-methyl-  |
| U028                | 117-81-7               | 1,2-Benzenedicarboxylic acid,bis(2-ethylhexyl) ester                            |
| U069                | 84-74-2                | 1,2-Benzenedicarboxylic acid, dibutyl ester                                     |
| U088                | 84-66-2                | 1,2-Benzenedicarboxylic acid, diethyl ester                                     |
| U102                | 131-11-3               | 1,2-Benzenedicarboxylic acid, dimethyl ester                                    |
| U107                | 117-84-0               | 1,2-Benzenedicarboxylic acid, dioctyl ester                                     |
| U070                | 95-50-1                | Benzene, 1,2-dichloro-  |
| U071                | 541-73-1               | Benzene, 1,3-dichloro-  |
| U072                | 106-46-7               | Benzene, 1,4-dichloro-  |
| U060                | 72-54-8                | Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-                             |
| U017                | 98-87-3                | Benzene, (dichloromethyl)-  |
| U223                | 26471-62-5             | Benzene, 1,3-diisocyanatomethyl-(R,T)   |
| U239                | 1330-20-7              | Benzene, dimethyl- (I)  |
| U201                | 108-46-3               | 1,3-Benzenediol   |
| U127                | 118-74-1               | Benzene, hexachloro-  |
| U056                | 110-82-7               | Benzene, hexahydro- (I)   |
| U220                | 108-88-3               | Benzene, methyl-  |
| U105                | 121-14-2               | Benzene, 1-methyl-2,4-dinitro-  |
| U106                | 606-20-2               | Benzene, 2-methyl-1,3-dinitro-  |
| U055                | 98-82-8                | Benzene, (1-methylethyl)- (I)   |
| U169                | 98-95-3                | Benzene, nitro-   |
| U183                | 608-93-5               | Benzene, pentachloro-   |
| U185                | 82-68-8                | Benzene, pentachloronitro-  |
| U020                | 98-09-9                | Benzenesulfonic acid chloride (C,R)   |
| U020                | 98-09-9                | Benzenesulfonyl chloride (C,R)  |
| U207                | 95-94-3                | Benzene, 1,2,4,5-tetrachloro-   |
| U061                | 50-29-3                | Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-                          |
| U247                | 72-43-5                | Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-                         |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U023                | 98-07-7                | Benzene, (trichloromethyl)-   |
| U234                | 99-35-4                | Benzene, 1,3,5-trinitro-  |
| U021                | 92-87-5                | Benzidine   |
| U278                | 22781-23-3             | 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate   |
| U364                | 22961-82-6             | 1,3-Benzodioxol-4-ol, 2,2-dimethyl-   |
| U203                | 94-59-7                | 1,3-Benzodioxole, 5-(2-propenyl)-   |
| U141                | 120-58-1               | 1,3-Benzodioxole, 5-(1-propenyl)-   |
| U090                | 94-58-6                | 1,3-Benzodioxole, 5-propyl-   |
| U367                | 1563-38-8              | 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-   |
| U064                | 189-55-9               | Benzo[rs]t]pentaphene   |
| U248                | 181-81-2               | 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less   |
| U022                | 50-32-8                | Benzo[a]pyrene  |
| U197                | 106-51-4               | p-Benzoquinone  |
| U023                | 98-07-7                | Benzotrichloride (C,R,T)  |
| U085                | 1464-53-5              | 2,2'-Bioxirane  |
| U021                | 92-87-5                | [1,1'-Biphenyl]-4,4'-diamine  |
| U073                | 91-94-1                | [1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-   |
| U091                | 119-90-4               | [1,1'-Biphenyl]-4,4'-diamine, 3,3'-dime-thoxy-  |
| U095                | 119-93-7               | [1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethyl-   |
| U225                | 75-25-2                | Bromoform   |
| U030                | 101-55-3               | 4-Bromophenyl phenyl ether  |
| U128                | 87-68-3                | 1,3-Butadiene, 1,1,2,3,4,4-hexachloro-  |
| U172                | 924-16-3               | 1-Butanamine, N-butyl-N-nitroso-  |
| U031                | 71-36-3                | 1-Butanol (I)   |
| U159                | 78-93-3                | 2-Butanone (I,T)  |
| U160                | 1338-23-4              | 2-Butanone, peroxide (R,T)  |
| U053                | 4170-30-3              | 2-Butenal   |
| U074                | 764-41-0               | 2-Butene, 1,4-dichloro- (I,T)   |
| U143                | 303-34-4               | 2-Butenoic acid, 2-methyl-, 7-[[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-ylester, [1S-[1alpha(Z),7(2S*,3R*), 7aalpha]]- |
| U031                | 71-36-3                | n-Butyl alcohol (I)   |
| U136                | 75-60-5                | Cacodylic acid  |
| U032                | 13765-19-0             | Calcium chromate  |
| U238                | 51-79-6                | Carbamic acid, ethyl ester  |
| U178                | 615-53-2               | Carbamic acid, methylnitroso-,ethyl ester   |
| U372                | 10605-21-7             | Carbamic acid, 1H-benzimidazol-2-yl, methyl ester   |
| U271                | 17804-35-2             | Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester   |
| U280                | 101-27-9               | Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester  |
| U373                | 122-42-9               | Carbamic acid, phenyl-, 1-methylethyl ester   |
| U409                | 23564-05-8             | Carbamic acid, [1,2-phenylenebis (imino-carbonothioyl)]bis-, dimethyl ester   |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U097                | 79-44-7                | Carbamic chloride, dimethyl-   |
| U114                | 1111-54-6              | Carbamodithioic acid, 1,2-ethanediybis-, salts & esters                          |
| U062                | 2303-16-4              | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester       |
| U389                | 2303-17-5              | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester    |
| U387                | 52888-80-9             | Carbamothioic acid, dipropyl-, S-(phenyl-methyl) ester                           |
| U279                | 63-25-2                | Carbaryl   |
| U372                | 10605-21-7             | Carbendazim  |
| U367                | 1563-38-8              | Carbofuran phenol  |
| U215                | 6533-73-9              | Carbonic acid, dithallium(1+) salt   |
| U033                | 353-50-4               | Carbonic difluoride  |
| U156                | 79-22-1                | Carbonochloridic acid, methyl ester (I,T)  |
| U033                | 353-50-4               | Carbon oxyfluoride (R,T)   |
| U211                | 56-23-5                | Carbon tetrachloride   |
| U034                | 75-87-6                | Chloral  |
| U035                | 305-03-3               | Chlorambucil   |
| U036                | 57-74-9                | Chlordane, alpha & gammaisomers  |
| U026                | 494-03-1               | Chlornaphazin  |
| U037                | 108-90-7               | Chlorobenzene  |
| U038                | 510-15-6               | Chlorobenzilate  |
| U039                | 59-50-7                | p-Chloro-m-cresol  |
| U042                | 110-75-8               | 2-Chloroethyl vinyl ether  |
| U044                | 67-66-3                | Chloroform   |
| U046                | 107-30-2               | Chloromethyl methyl ether  |
| U047                | 91-58-7                | beta-Chloronaphthalene   |
| U048                | 95-57-8                | o-Chlorophenol   |
| U049                | 3165-93-3              | 4-Chloro-o-toluidine,hydrochloride   |
| U032                | 13765-19-0             | Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt                      |
| U050                | 218-01-9               | Chrysene   |
| U051                |                        | Creosote   |
| U052                | 1319-77-3              | Cresol (Cresylic acid)   |
| U053                | 4170-30-3              | Crotonaldehyde   |
| U055                | 98-82-8                | Cumene (I)   |
| U246                | 506-68-3               | Cyanogen bromide (CN)Br  |
| U197                | 106-51-4               | 2,5-Cyclohexadiene-1,4-dione   |
| U056                | 110-82-7               | Cyclohexane (I)  |
| U129                | 58-89-9                | Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)- |
| U057                | 108-94-1               | Cyclohexanone (I)  |
| U130                | 77-47-4                | 1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-                                     |
| U058                | 50-18-0                | Cyclophosphamide   |
| U240                | 194-75-7               | 2,4-D, salts & esters  |
| U059                | 20830-81-3             | Daunomycin   |
| U060                | 72-54-8                | DDD  |
| U061                | 50-29-3                | DDT  |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance                                   |
|---------------------|------------------------|---|
| U062                | 2303-16-4              | Diallate                                    |
| U063                | 53-70-3                | Dibenz[a,h]anthracene                       |
| U064                | 189-55-9               | Dibenzo[a,i]pyrene                          |
| U066                | 96-12-8                | 1,2-Dibromo-3-chloropropane                 |
| U069                | 84-74-2                | Dibutyl phthalate                           |
| U070                | 95-50-1                | o-Dichlorobenzene                           |
| U071                | 541-73-1               | m-Dichlorobenzene                           |
| U072                | 106-46-7               | p-Dichlorobenzene                           |
| U073                | 91-94-1                | 3,3'-Dichlorobenzidine                      |
| U074                | 764-41-0               | 1,4-Dichloro-2-butene (I,T)                 |
| U075                | 75-71-8                | Dichlorodifluoromethane                     |
| U078                | 75-35-4                | 1,1-Dichloroethylene                        |
| U079                | 156-60-5               | 1,2-Dichloroethylene                        |
| U025                | 111-44-4               | Dichloroethyl ether                         |
| U027                | 108-60-1               | Dichloroisopropyl ether                     |
| U024                | 111-91-1               | Dichloromethoxy ethane                      |
| U081                | 120-83-2               | 2,4-Dichlorophenol                          |
| U082                | 87-65-0                | 2,6-Dichlorophenol                          |
| U084                | 542-75-6               | 1,3-Dichloropropene                         |
| U085                | 1464-53-5              | 1,2:3,4-Diepoxybutane (I,T)                 |
| U395                | 5952-26-1              | Diethylene glycol, dicarbamate              |
| U108                | 123-91-1               | 1,4-Diethyleneoxide                         |
| U028                | 117-81-7               | Diethylhexyl phthalate                      |
| U086                | 1615-80-1              | N,N'-Diethylhydrazine                       |
| U087                | 3288-58-2              | O,O-Diethyl S-methyl dithiophosphate        |
| U088                | 84-66-2                | Diethyl phthalate                           |
| U089                | 56-53-1                | Diethylstilbesterol                         |
| U090                | 94-58-6                | Dihydrosafrole                              |
| U091                | 119-90-4               | 3,3'-Dimethoxybenzidine                     |
| U092                | 124-40-3               | Dimethylamine (I)                           |
| U093                | 60-11-7                | p-Dimethylaminoazobenzene                   |
| U094                | 57-97-6                | 7,12-Dimethylbenz[a]anthracene              |
| U095                | 119-93-7               | 3,3'-Dimethylbenzidine                      |
| U096                | 80-15-9                | alpha,alpha-Dimethylbenzylhydroperoxide (R) |
| U097                | 79-44-7                | Dimethylcarbamoyl chloride                  |
| U098                | 57-14-7                | 1,1-Dimethylhydrazine                       |
| U099                | 540-73-8               | 1,2-Dimethylhydrazine                       |
| U101                | 105-67-9               | 2,4-Dimethylphenol                          |
| U102                | 131-11-3               | Dimethyl phthalate                          |
| U103                | 77-78-1                | Dimethyl sulfate                            |
| U105                | 121-14-2               | 2,4-Dinitrotoluene                          |
| U106                | 606-20-2               | 2,6-Dinitrotoluene                          |
| U107                | 117-84-0               | Di-n-octyl phthalate                        |
| U108                | 123-91-1               | 1,4-Dioxane                                 |
| U109                | 122-66-7               | 1,2-Diphenylhydrazine                       |
| U110                | 142-84-7               | Dipropylamine (I)                           |
| U111                | 621-64-7               | Di-n-propylnitrosamine                      |
| U041                | 106-89-8               | Epichlorohydrin                             |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U001                | 75-07-0                | Ethanal (I)   |
| U174                | 55-18-5                | Ethanamine, N-ethyl-N-nitroso-  |
| U404                | 121-44-8               | Ethanamine, N,N-diethyl-  |
| U155                | 91-80-5                | 1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-                  |
| U067                | 106-93-4               | Ethane, 1,2-dibromo-  |
| U076                | 75-34-3                | Ethane, 1,1-dichloro-   |
| U077                | 107-06-2               | Ethane, 1,2-dichloro-   |
| U131                | 67-72-1                | Ethane, hexachloro-   |
| U024                | 111-91-1               | Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-   |
| U117                | 60-29-7                | Ethane, 1,1'-oxybis-(I)   |
| U025                | 111-44-4               | Ethane, 1,1'-oxybis[2-chloro-   |
| U184                | 76-01-7                | Ethane, pentachloro-  |
| U208                | 630-20-6               | Ethane, 1,1,1,2-tetrachloro-  |
| U209                | 79-34-5                | Ethane, 1,1,2,2-tetrachloro-  |
| U218                | 62-55-5                | Ethanethioamide   |
| U226                | 71-55-6                | Ethane, 1,1,1-trichloro-  |
| U227                | 79-00-5                | Ethane, 1,1,2-trichloro-  |
| U410                | 59669-26-0             | Ethanimidothioic acid, N,N'-[thio-bis[(methylimino) carbonyloxy]]bis-, dimethyl ester |
| U394                | 30558-43-1             | Ethanimidothioic acid, 2-(dimethylamino) - N-hydroxy-2-oxo-, methyl ester             |
| U359                | 110-80-5               | Ethanol, 2-ethoxy-  |
| U173                | 1116-54-7              | Ethanol, 2,2'-(nitrosoimino)bis-  |
| U395                | 5952-26-1              | Ethanol, 2,2'-oxybis-, dicarbamate  |
| U004                | 98-86-2                | Ethanone, 1-phenyl-   |
| U043                | 75-01-4                | Ethene, chloro-   |
| U042                | 110-75-8               | Ethene, (2-chloroethoxy)-   |
| U078                | 75-35-4                | Ethene, 1,1-dichloro-   |
| U079                | 156-60-5               | Ethene, 1,2-dichloro-, (E)-   |
| U210                | 127-18-4               | Ethene, tetrachloro-  |
| U228                | 79-01-6                | Ethene, trichloro-  |
| U112                | 141-78-6               | Ethyl acetate (I)   |
| U113                | 140-88-5               | Ethyl acrylate (I)  |
| U238                | 51-79-6                | Ethyl carbamate (urethane)  |
| U117                | 60-29-7                | Ethyl ether (I)   |
| U114                | 111-54-6               | Ethylenebisdithiocarbamic acid,salts & esters   |
| U067                | 106-93-4               | Ethylene dibromide  |
| U077                | 107-06-2               | Ethylene dichloride   |
| U359                | 110-80-5               | Ethylene glycol monoethyl ether   |
| U115                | 75-21-8                | Ethylene oxide (I,T)  |
| U116                | 96-45-7                | Ethylenethiourea  |
| U076                | 75-34-3                | Ethylidene dichloride   |
| U118                | 97-63-2                | Ethyl methacrylate  |
| U119                | 62-50-0                | Ethyl methanesulfonate  |
| U120                | 206-44-0               | Fluoranthene  |
| U122                | 50-00-0                | Formaldehyde  |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U123                | 64-18-6                | Formic acid (C,T)   |
| U124                | 110-00-9               | Furan (I)   |
| U125                | 98-01-1                | 2-Furancarboxaldehyde (I)                                     |
| U147                | 108-31-6               | 2,5-Furandione  |
| U213                | 109-99-9               | Furan, tetrahydro-(I)   |
| U125                | 98-01-1                | Furfural (I)  |
| U124                | 110-00-9               | Furfuran (I)  |
| U206                | 18883-66-4             | Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-      |
| U206                | 18883-66-4             | D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)-carbonyl]amino]- |
| U126                | 765-34-4               | Glycidylaldehyde  |
| U163                | 70-25-7                | Guanidine, N-methyl-N'-nitro-N-nitroso-                       |
| U127                | 118-74-1               | Hexachlorobenzene   |
| U128                | 87-68-3                | Hexachlorobutadiene   |
| U130                | 77-47-4                | Hexachlorocyclopentadiene                                     |
| U131                | 67-72-1                | Hexachloroethane  |
| U132                | 70-30-4                | Hexachlorophene   |
| U243                | 1888-71-7              | Hexachloropropene   |
| U133                | 302-01-2               | Hydrazine (R,T)   |
| U086                | 1615-80-1              | Hydrazine, 1,2-diethyl-                                       |
| U098                | 57-14-7                | Hydrazine, 1,1-dimethyl-                                      |
| U099                | 540-73-8               | Hydrazine, 1,2-dimethyl-                                      |
| U109                | 122-66-7               | Hydrazine, 1,2-diphenyl-                                      |
| U134                | 7664-39-3              | Hydrofluoric acid (C,T)                                       |
| U134                | 7664-39-3              | Hydrogen fluoride (C,T)                                       |
| U135                | 7783-06-4              | Hydrogen sulfide  |
| U135                | 7783-06-4              | Hydrogen sulfide H <sub>2</sub> S                             |
| U096                | 80-15-9                | Hydroperoxide, 1-methyl-1-phenylethyl-(R)                     |
| U116                | 96-45-7                | 2-Imidazolidinethione   |
| U137                | 193-39-5               | Indeno[1,2,3-cd]pyrene  |
| U190                | 85-44-9                | 1,3-Isobenzofurandione  |
| U140                | 78-83-1                | Isobutyl alcohol (I,T)  |
| U141                | 120-58-1               | Isosafrole  |
| U142                | 143-50-0               | Kepone  |
| U143                | 303-34-4               | Lasiocarpine  |
| U144                | 301-04-2               | Lead acetate  |
| U146                | 1335-32-6              | Lead, bis(acetato-O)tetrahydroxytri-                          |
| U145                | 7446-27-7              | Lead phosphate  |
| U146                | 1335-32-6              | Lead subacetate   |
| U129                | 58-89-9                | Lindane   |
| U163                | 70-25-7                | MNNG  |
| U147                | 108-31-6               | Maleic anhydride  |
| U148                | 123-33-1               | Maleic hydrazide  |
| U149                | 109-77-3               | Malononitrile   |
| U150                | 148-82-3               | Melphalan   |
| U151                | 7439-97-6              | Mercury   |
| U152                | 126-98-7               | Methacrylonitrile (I, T)                                      |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U092                | 124-40-3               | Methanamine, N-methyl- (I)   |
| U029                | 74-83-9                | Methane, bromo-  |
| U045                | 74-87-3                | Methane, chloro- (I, T)  |
| U046                | 107-30-2               | Methane, chloromethoxy-  |
| U068                | 74-95-3                | Methane, dibromo-  |
| U080                | 75-09-2                | Methane, dichloro-   |
| U075                | 75-71-8                | Methane, dichlorodifluoro-   |
| U138                | 74-88-4                | Methane, iodo-   |
| U119                | 62-50-0                | Methanesulfonic acid, ethyl ester  |
| U211                | 56-23-5                | Methane, tetrachloro-  |
| U153                | 74-93-1                | Methanethiol (I, T)  |
| U225                | 75-25-2                | Methane, tribromo-   |
| U044                | 67-66-3                | Methane, trichloro-  |
| U121                | 75-69-4                | Methane, trichlorofluoro-  |
| U036                | 57-74-9                | 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-   |
| U154                | 67-56-1                | Methanol (I)   |
| U155                | 91-80-5                | Methapyrilene  |
| U142                | 143-50-0               | 1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-   |
| U247                | 72-43-5                | Methoxychlor   |
| U154                | 67-56-1                | Methyl alcohol (I)   |
| U029                | 74-83-9                | Methyl bromide   |
| U186                | 504-60-9               | 1-Methylbutadiene (I)  |
| U045                | 74-87-3                | Methyl chloride (I,T)  |
| U156                | 79-22-1                | Methyl chlorocarbonate (I,T)   |
| U226                | 71-55-6                | Methyl chloroform  |
| U157                | 56-49-5                | 3-Methylcholanthrene   |
| U158                | 101-14-4               | 4,4'-Methylenebis(2-chloroaniline)   |
| U068                | 74-95-3                | Methylene bromide  |
| U080                | 75-09-2                | Methylene chloride   |
| U159                | 78-93-3                | Methyl ethyl ketone (MEK) (I,T)  |
| U160                | 1338-23-4              | Methyl ethyl ketone peroxide (R,T)   |
| U138                | 74-88-4                | Methyl iodide  |
| U161                | 108-10-1               | Methyl isobutyl ketone (I)   |
| U162                | 80-62-6                | Methyl methacrylate (I,T)  |
| U161                | 108-10-1               | 4-Methyl-2-pentanone (I)   |
| U164                | 56-04-2                | Methylthiouracil   |
| U010                | 50-07-7                | Mitomycin C  |
| U059                | 20830-81-3             | 5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)- |
| U167                | 134-32-7               | 1-Naphthalenamine  |
| U168                | 91-59-8                | 2-Naphthalenamine  |
| U026                | 494-03-1               | Naphthalenamine, N,N'-bis(2-chloroethyl)-  |
| U165                | 91-20-3                | Naphthalene  |
| U047                | 91-58-7                | Naphthalene, 2-chloro-   |
| U166                | 130-15-4               | 1,4-Naphthalenedione   |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U236                | 72-57-1                | 2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diy)]bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt |
| U279                | 63-25-2                | 1-Naphthalenol, methylcarbamate  |
| U166                | 130-15-4               | 1,4-Naphthoquinone   |
| U167                | 134-32-7               | alpha-Naphthylamine  |
| U168                | 91-59-8                | beta-Naphthylamine   |
| U217                | 10102-45-1             | Nitric acid, thallium(1+) salt   |
| U169                | 98-95-3                | Nitrobenzene (I,T)   |
| U170                | 100-02-7               | p-Nitrophenol  |
| U171                | 79-46-9                | 2-Nitropropane (I,T)   |
| U172                | 924-16-3               | N-Nitrosodi-n-butylamine   |
| U173                | 1116-54-7              | N-Nitrosodiethanolamine  |
| U174                | 55-18-5                | N-Nitrosodiethylamine  |
| U176                | 759-73-9               | N-Nitroso-N-ethylurea  |
| U177                | 684-93-5               | N-Nitroso-N-methylurea   |
| U178                | 615-53-2               | N-Nitroso-N-methylurethane   |
| U179                | 100-75-4               | N-Nitrosopiperidine  |
| U180                | 930-55-2               | N-Nitrosopyrrolidine   |
| U181                | 99-55-8                | 5-Nitro-o-toluidine  |
| U193                | 1120-71-4              | 1,2-Oxathiolane, 2,2-dioxide   |
| U058                | 50-18-0                | 2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide   |
| U115                | 75-21-8                | Oxirane (I,T)  |
| U126                | 765-34-4               | Oxiranecarboxyaldehyde   |
| U041                | 106-89-8               | Oxirane, (chloromethyl)-   |
| U182                | 123-63-7               | Paraldehyde  |
| U183                | 608-93-5               | Pentachlorobenzene   |
| U184                | 76-01-7                | Pentachloroethane  |
| U185                | 82-68-8                | Pentachloronitrobenzene (PCNB)   |
| See F027            | 87-86-5                | Pentachlorophenol  |
| U161                | 108-10-1               | Pentanol, 4-methyl-  |
| U186                | 504-60-9               | 1,3-Pentadiene (I)   |
| U187                | 62-44-2                | Phenacetin   |
| U188                | 108-95-2               | Phenol   |
| U048                | 95-57-8                | Phenol, 2-chloro-  |
| U039                | 59-50-7                | Phenol, 4-chloro-3-methyl-   |
| U081                | 120-83-2               | Phenol, 2,4-dichloro-  |
| U082                | 87-65-0                | Phenol, 2,6-dichloro-  |
| U089                | 56-53-1                | Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-  |
| U101                | 105-67-9               | Phenol, 2,4-dimethyl-  |
| U052                | 1319-77-3              | Phenol, methyl-  |
| U132                | 70-30-4                | Phenol, 2,2'-methylenebis[3,4,6-trichloro-   |
| U411                | 114-26-1               | Phenol, 2-(1-methylethoxy)-, methylcarbamate   |
| U170                | 100-02-7               | Phenol, 4-nitro-   |
| See F027            | 87-86-5                | Phenol, pentachloro-   |
| See F027            | 58-90-2                | Phenol, 2,3,4,6-tetrachloro-   |

## Alphabetical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| See F027            | 95-95-4                | Phenol, 2,4,5-trichloro-                                  |
| See F027            | 88-06-2                | Phenol, 2,4,6-trichloro-                                  |
| U150                | 148-82-3               | L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-             |
| U145                | 7446-27-7              | Phosphoric acid, lead(2+) salt (2:3)                      |
| U087                | 3288-58-2              | Phosphorodithioic acid, O,O-diethyl S-methyl ester        |
| U189                | 1314-80-3              | Phosphorus sulfide (R)                                    |
| U190                | 85-44-9                | Phthalic anhydride  |
| U191                | 109-06-8               | 2-Picoline  |
| U179                | 100-75-4               | Piperidine, 1-nitroso-                                    |
| U192                | 23950-58-5             | Pronamide   |
| U194                | 107-10-8               | 1-Propanamine (I,T)                                       |
| U111                | 621-64-7               | 1-Propanamine, N-nitroso-N-propyl-                        |
| U110                | 142-84-7               | 1-Propanamine, N-propyl- (I)                              |
| U066                | 96-12-8                | Propane, 1,2-dibromo-3-chloro-                            |
| U083                | 78-87-5                | Propane, 1,2-dichloro-                                    |
| U149                | 109-77-3               | Propanedinitrile  |
| U171                | 79-46-9                | Propane, 2-nitro- (I,T)                                   |
| U027                | 108-60-1               | Propane, 2,2'-oxybis[2-chloro-                            |
| U193                | 1120-71-4              | 1,3-Propane sultone                                       |
| See F027            | 93-72-1                | Propanoic acid, 2-(2,4,5-trichlorophenoxy)-               |
| U235                | 126-72-7               | 1-Propanol, 2,3-dibromo-,phosphate (3:1)                  |
| U140                | 78-83-1                | 1-Propanol, 2-methyl- (I,T)                               |
| U002                | 67-64-1                | 2-Propanone (I)   |
| U007                | 79-06-1                | 2-Propenamide   |
| U084                | 542-75-6               | 1-Propene, 1,3-dichloro-                                  |
| U243                | 1888-71-7              | 1-Propene, 1,1,2,3,3,3-hexachloro-                        |
| U009                | 107-13-1               | 2-Propenenitrile  |
| U152                | 126-98-7               | 2-Propenenitrile, 2-methyl- (I,T)                         |
| U008                | 79-10-7                | 2-Propenoic acid (I)                                      |
| U113                | 140-88-5               | 2-Propenoic acid, ethyl ester (I)                         |
| U118                | 97-63-2                | 2-Propenoic acid, 2-methyl-, ethyl ester                  |
| U162                | 80-62-6                | 2-Propenoic acid, 2-methyl-,methyl ester (I,T)            |
| U373                | 122-42-9               | Propham   |
| U411                | 114-26-1               | Propoxur  |
| U387                | 52888-80-9             | Prosulfocarb  |
| U194                | 107-10-8               | n-Propylamine (I,T)                                       |
| U083                | 78-87-5                | Propylene dichloride                                      |
| U148                | 123-33-1               | 3,6-Pyridazinedione, 1,2-dihydro-                         |
| U196                | 110-86-1               | Pyridine  |
| U191                | 109-06-8               | Pyridine, 2-methyl-                                       |
| U237                | 66-75-1                | 2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]- |
| U164                | 56-04-2                | 4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-        |
| U180                | 930-55-2               | Pyrrolidine, 1-nitroso-                                   |
| U200                | 50-55-5                | Reserpine   |

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| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U201                | 108-46-3               | Resorcinol   |
| U203                | 94-59-7                | Safrole  |
| U204                | 7783-00-8              | Selenious acid   |
| U204                | 7783-00-8              | Selenium dioxide   |
| U205                | 7488-56-4              | Selenium sulfide   |
| U205                | 7488-56-4              | Selenium sulfide SeS <sub>2</sub> (R,T)  |
| U015                | 115-02-6               | L-Serine, diazoacetate (ester)   |
| See F027            | 93-72-1                | Silvex (2,4,5-TP)  |
| U206                | 18883-66-4             | Streptozotocin   |
| U103                | 77-78-1                | Sulfuric acid, dimethyl ester  |
| U189                | 1314-80-3              | Sulfur phosphide (R)   |
| See F027            | 93-76-5                | 2,4,5-T  |
| U207                | 95-94-3                | 1,2,4,5-Tetrachlorobenzene   |
| U208                | 630-20-6               | 1,1,1,2-Tetrachloroethane  |
| U209                | 79-34-5                | 1,1,2,2-Tetrachloroethane  |
| U210                | 127-18-4               | Tetrachloroethylene  |
| See F027            | 58-90-2                | 2,3,4,6-Tetrachlorophenol  |
| U213                | 109-99-9               | Tetrahydrofuran (I)  |
| U214                | 563-68-8               | Thallium(I) acetate  |
| U215                | 6533-73-9              | Thallium(I) carbonate  |
| U216                | 7791-12-0              | Thallium(I) chloride   |
| U216                | 7791-12-0              | Thallium chloride TlCl   |
| U217                | 10102-45-1             | Thallium(I) nitrate  |
| U218                | 62-55-5                | Thioacetamide  |
| U410                | 59669-26-0             | Thiodicarb   |
| U153                | 74-93-1                | Thiomethanol (I,T)   |
| U244                | 137-26-8               | Thioperoxydicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl- |
| U409                | 23564-05-8             | Thiophanate-methyl   |
| U219                | 62-56-6                | Thiourea   |
| U244                | 137-26-8               | Thiram   |
| U220                | 108-88-3               | Toluene  |
| U221                | 25376-45-8             | Toluenediamine   |
| U223                | 26471-62-5             | Toluene diisocyanate (R,T)   |
| U328                | 95-53-4                | o-Toluidine  |
| U353                | 106-49-0               | p-Toluidine  |
| U222                | 636-21-5               | o-Toluidine hydrochloride  |
| U389                | 2303-17-5              | Triallate  |
| U011                | 61-82-5                | 1H-1,2,4-Triazol-3-amine   |
| U226                | 71-55-6                | 1,1,1-Trichloroethane  |
| U227                | 79-00-5                | 1,1,2-Trichloroethane  |
| U228                | 79-01-6                | Trichloroethylene  |
| U121                | 75-69-4                | Trichloromonofluoromethane   |
| See F027            | 95-95-4                | 2,4,5-Trichlorophenol  |
| See F027            | 88-06-2                | 2,4,6-Trichlorophenol  |
| U404                | 121-44-8               | Triethylamine  |
| U234                | 99-35-4                | 1,3,5-Trinitrobenzene (R,T)  |
| U182                | 123-63-7               | 1,3,5-Trioxane, 2,4,6-trimethyl-   |
| U235                | 126-72-7               | Tris(2,3-dibromopropyl)phosphate   |

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| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U236                | 72-57-1                | Trypan blue  |
| U237                | 66-75-1                | Uracil mustard   |
| U176                | 759-73-9               | Urea, N-ethyl-N-nitroso-   |
| U177                | 684-93-5               | Urea, N-methyl-N-nitroso-  |
| U043                | 75-01-4                | Vinyl chloride   |
| U248                | 181-81-2               | Warfarin, & salts, when present at concentrations of 0.3% or less  |
| U239                | 1330-20-7              | Xylene (I)   |
| U200                | 50-55-5                | Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)- |
| U249                | 1314-84-7              | Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10% or less  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U001                | 75-07-0                | Acetaldehyde (I)  |
| U001                | 75-07-0                | Ethanal (I)   |
| U002                | 67-64-1                | Acetone (I)   |
| U002                | 67-64-1                | 2-Propanone (I)   |
| U003                | 75-05-8                | Acetonitrile (I,T)  |
| U004                | 98-86-2                | Acetophenone  |
| U004                | 98-86-2                | Ethanone, 1-phenyl-   |
| U005                | 53-96-3                | Acetamide, -9H-fluorene-2-yl-   |
| U005                | 53-96-3                | 2-Acetylaminofluorene   |
| U006                | 75-36-5                | Acetyl chloride (C,R,T)   |
| U007                | 79-06-1                | Acrylamide  |
| U007                | 79-06-1                | 2-Propenamamide   |
| U008                | 79-10-7                | Acrylic acid (I)  |
| U008                | 79-10-7                | 2-Propenoic acid (I)  |
| U009                | 107-13-1               | Acrylonitrile   |
| U009                | 107-13-1               | 2-Propenenitrile  |
| U010                | 50-07-7                | Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1alpha,8beta,8alpha,8beta)]- |
| U010                | 50-07-7                | Mitomycin C   |
| U011                | 61-82-5                | Amitrole  |
| U011                | 61-82-5                | 1H-1,2,4-Triazol-3-amine  |
| U012                | 62-53-3                | Aniline (I,T)   |
| U012                | 62-53-3                | Benzenamine (I,T)   |
| U014                | 492-80-8               | Auramine  |
| U014                | 492-80-8               | Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-  |
| U015                | 115-02-6               | Azaserine   |
| U015                | 115-02-6               | L-Serine, diazoacetate(ester)   |
| U016                | 225-51-4               | Benz[c]acridine   |
| U017                | 98-87-3                | Benzal chloride   |
| U017                | 98-87-3                | Benzene, (dichloromethyl)-  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U018                | 56-55-3                | Benz[a]anthracene   |
| U019                | 71-43-2                | ((Benzenesulfonic acid chloride(C,R)))<br>Benzene (I,T)                         |
| U020                | 98-09-9                | Benzenesulfonic acid chloride (C,R)   |
| U020                | 98-09-9                | Benzenesulfonyl chloride(C,R)   |
| U021                | 92-87-5                | Benzidine   |
| U021                | 92-87-5                | [1,1'-Biphenyl]-4,4'-diamine  |
| U022                | 50-32-8                | Benzo[a]pyrene  |
| U023                | 98-07-7                | Benzene, (trichloromethyl)-   |
| U023                | 98-07-7                | Benzotrichloride (C,R,T)  |
| U024                | 111-91-1               | Dichloromethoxy ethane  |
| U024                | 111-91-1               | Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-                                   |
| U025                | 111-44-4               | Dichloroethyl ether   |
| U025                | 111-44-4               | Ethane, 1,1'-oxybis[2-chloro-   |
| U026                | 494-03-1               | Chlornaphazin   |
| U026                | 494-03-1               | Naphthalenamine, N,N'-bis(2-chloroethyl)-                                       |
| U027                | 108-60-1               | Dichloroisopropyl ether   |
| U027                | 108-60-1               | Propane, 2,2'-oxybis[2-chloro-  |
| U028                | 117-81-7               | 1,2-Benzenedicarboxylic acid,bis(2-ethyl-hexyl) ester                           |
| U028                | 117-81-7               | Diethylhexyl phthalate  |
| U029                | 74-83-9                | Methane, bromo-   |
| U029                | 74-83-9                | Methyl bromide  |
| U030                | 101-55-3               | Benzene, 1-bromo-4-phenoxy-   |
| U030                | 101-55-3               | 4-Bromophenyl phenyl ether  |
| U031                | 71-36-3                | 1-Butanol (I)   |
| U031                | 71-36-3                | n-Butyl alcohol (I)   |
| U032                | 13765-19-0             | Calcium chromate  |
| U032                | 13765-19-0             | Chromic acid H2 CrO4, calcium salt  |
| U033                | 353-50-4               | Carbonic difluoride   |
| U033                | 353-50-4               | Carbon oxyfluoride (R,T)  |
| U034                | 75-87-6                | Acetaldehyde, trichloro-  |
| U034                | 75-87-6                | Chloral   |
| U035                | 305-03-3               | Benzenebutanoic acid, 4-[bis(2-chloro-ethyl)amino]-                             |
| U035                | 305-03-3               | Chlorambucil  |
| U036                | 57-74-9                | Chlordane, alpha & gamma isomers  |
| U036                | 57-74-9                | 4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-       |
| U037                | 108-90-7               | Benzene, chloro-  |
| U037                | 108-90-7               | Chlorobenzene   |
| U038                | 510-15-6               | Benzenoacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester |
| U038                | 510-15-6               | Chlorobenzilate   |
| U039                | 59-50-7                | p-Chloro-m-cresol   |
| U039                | 59-50-7                | Phenol, 4-chloro-3-methyl-  |
| U041                | 106-89-8               | Epichlorohydrin   |
| U041                | 106-89-8               | Oxirane, (chloromethyl)-  |
| U042                | 110-75-8               | 2-Chloroethyl vinyl ether   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U042                | 110-75-8               | Ethene, (2-chloroethoxy)-  |
| U043                | 75-01-4                | Ethene, chloro-  |
| U043                | 75-01-4                | Vinyl chloride   |
| U044                | 67-66-3                | Chloroform   |
| U044                | 67-66-3                | Methane, trichloro-  |
| U045                | 74-87-3                | Methane, chloro- (I,T)   |
| U045                | 74-87-3                | Methyl chloride (I,T)  |
| U046                | 107-30-2               | Chloromethyl methyl ether  |
| U046                | 107-30-2               | Methane, chloromethoxy-  |
| U047                | 91-58-7                | beta-Chloronaphthalene   |
| U047                | 91-58-7                | Naphthalene, 2-chloro-   |
| U048                | 95-57-8                | o-Chlorophenol   |
| U048                | 95-57-8                | Phenol, 2-chloro-  |
| U049                | 3165-93-3              | Benzenamine, 4-chloro-2-methyl-, hydrochloride   |
| U049                | 3165-93-3              | 4-Chloro-o-toluidine, hydrochloride  |
| U050                | 218-01-9               | Chrysene   |
| U051                | .....                  | Creosote   |
| U052                | 1319-77-3              | Cresol (Cresylic acid)   |
| U052                | 1319-77-3              | Phenol, methyl-  |
| U053                | 4170-30-3              | 2-Butenal  |
| U053                | 4170-30-3              | Crotonaldehyde   |
| U055                | 98-82-8                | Benzene, (1-methylethyl)-(I)   |
| U055                | 98-82-8                | Cumene (I)   |
| U056                | 110-82-7               | Benzene, hexahydro-(I)   |
| U056                | 110-82-7               | Cyclohexane (I)  |
| U057                | 108-94-1               | Cyclohexanone (I)  |
| U058                | 50-18-0                | Cyclophosphamide   |
| U058                | 50-18-0                | 2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide   |
| U059                | 20830-81-3             | Daunomycin   |
| U059                | 20830-81-3             | 5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)- |
| U060                | 72-54-8                | Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-  |
| U060                | 72-54-8                | DDD  |
| U061                | 50-29-3                | Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-   |
| U061                | 50-29-3                | DDT  |
| U062                | 2303-16-4              | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester   |
| U062                | 2303-16-4              | Diallate   |
| U063                | 53-70-3                | Dibenz[a,h]anthracene  |
| U064                | 189-55-9               | Benzo[rs]pentaphene  |
| U064                | 189-55-9               | Dibenzo[a,i]pyrene   |
| U066                | 96-12-8                | 1,2-Dibromo-3-chloropropane  |
| U066                | 96-12-8                | Propane, 1,2-dibromo-3-chloro-   |
| U067                | 106-93-4               | Ethane, 1,2-dibromo-   |
| U067                | 106-93-4               | Ethylene dibromide   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U068                | 74-95-3                | Methane, dibromo-                                   |
| U068                | 74-95-3                | Methylene bromide                                   |
| U069                | 84-74-2                | 1,2-Benzenedicarboxylic acid, dibutyl ester         |
| U069                | 84-74-2                | Dibutyl phthalate                                   |
| U070                | 95-50-1                | Benzene, 1,2-dichloro-                              |
| U070                | 95-50-1                | o-Dichlorobenzene                                   |
| U071                | 541-73-1               | Benzene, 1,3-dichloro-                              |
| U071                | 541-73-1               | m-Dichlorobenzene                                   |
| U072                | 106-46-7               | Benzene, 1,4-dichloro-                              |
| U072                | 106-46-7               | p-Dichlorobenzene                                   |
| U073                | 91-94-1                | [1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-        |
| U073                | 91-94-1                | 3,3'-Dichlorobenzidine                              |
| U074                | 764-41-0               | 2-Butene, 1,4-dichloro-(I,T)                        |
| U074                | 764-41-0               | 1,4-Dichloro-2-butene (I,T)                         |
| U075                | 75-71-8                | Dichlorodifluoromethane                             |
| U075                | 75-71-8                | Methane, dichlorodifluoro-                          |
| U076                | 75-34-3                | Ethane, 1,1-dichloro-                               |
| U076                | 75-34-3                | Ethylidene dichloride                               |
| U077                | 107-06-2               | Ethane, 1,2-dichloro-                               |
| U077                | 107-06-2               | Ethylene dichloride                                 |
| U078                | 75-35-4                | 1,1-Dichloroethylene                                |
| U078                | 75-35-4                | Ethene, 1,1-dichloro-                               |
| U079                | 156-60-5               | 1,2-Dichloroethylene                                |
| U079                | 156-60-5               | Ethene, 1,2-dichloro-, (E)-                         |
| U080                | 75-09-2                | Methane, dichloro-                                  |
| U080                | 75-09-2                | Methylene chloride                                  |
| U081                | 120-83-2               | 2,4-Dichlorophenol                                  |
| U081                | 120-83-2               | Phenol, 2,4-dichloro-                               |
| U082                | 87-65-0                | 2,6-Dichlorophenol                                  |
| U082                | 87-65-0                | Phenol, 2,6-dichloro-                               |
| U083                | 78-87-5                | Propane, 1,2-dichloro-                              |
| U083                | 78-87-5                | Propylene dichloride                                |
| U084                | 542-75-6               | 1,3-Dichloropropene                                 |
| U084                | 542-75-6               | 1-Propene, 1,3-dichloro-                            |
| U085                | 1464-53-5              | 2,2'-Bioxirane                                      |
| U085                | 1464-53-5              | 1,2:3,4-Diepoxybutane (I,T)                         |
| U086                | 1615-80-1              | N,N'-Diethylhydrazine                               |
| U086                | 1615-80-1              | Hydrazine, 1,2-diethyl-                             |
| U087                | 3288-58-2              | O,O-Diethyl S-methyldithiophosphate                 |
| U087                | 3288-58-2              | Phosphorodithioic acid, O,O-diethyl S-methyl ester  |
| U088                | 84-66-2                | 1,2-Benzenedicarboxylic acid, diethyl ester         |
| U088                | 84-66-2                | Diethyl phthalate                                   |
| U089                | 56-53-1                | Diethylstilbesterol                                 |
| U089                | 56-53-1                | Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)- |
| U090                | 94-58-6                | 1,3-Benzodioxole, 5-propyl-                         |
| U090                | 94-58-6                | Dihydrosafrole                                      |
| U091                | 119-90-4               | [1,1'-Biphenyl]-4,4'-diamine, 3,3'-dime-thoxy-      |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U091                | 119-90-4               | 3,3'-Dimethoxybenzidine                                 |
| U092                | 124-40-3               | Dimethylamine (I)                                       |
| U092                | 124-40-3               | Methanamine, -methyl-(I)                                |
| U093                | 60-11-7                | Benzenamine, N,N-dimethyl-4-(phenylazo)-                |
| U093                | 60-11-7                | p-Dimethylaminoazobenzene                               |
| U094                | 57-97-6                | Benz[a]anthracene, 7,12-dimethyl-                       |
| U094                | 57-97-6                | 7,12-Dimethylbenz[a]anthracene                          |
| U095                | 119-93-7               | [1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-            |
| U095                | 119-93-7               | 3,3'-Dimethylbenzidine                                  |
| U096                | 80-15-9                | alpha, alpha-Dimethylbenzylhydroperoxide (R)            |
| U096                | 80-15-9                | Hydroperoxide, 1-methyl-1-phenylethyl-(R)               |
| U097                | 79-44-7                | Carbamic chloride, dimethyl-                            |
| U097                | 79-44-7                | Dimethylcarbamoyl chloride                              |
| U098                | 57-14-7                | 1,1-Dimethylhydrazine                                   |
| U098                | 57-14-7                | Hydrazine, 1,1-dimethyl-                                |
| U099                | 540-73-8               | 1,2-Dimethylhydrazine                                   |
| U099                | 540-73-8               | Hydrazine, 1,2-dimethyl-                                |
| U101                | 105-67-9               | 2,4-Dimethylphenol                                      |
| U101                | 105-67-9               | Phenol, 2,4-dimethyl-                                   |
| U102                | 131-11-3               | 1,2-Benzenedicarboxylic acid, dimethyl ester            |
| U102                | 131-11-3               | Dimethyl phthalate                                      |
| U103                | 77-78-1                | Dimethyl sulfate  |
| U103                | 77-78-1                | Sulfuric acid, dimethyl ester                           |
| U105                | 121-14-2               | Benzene, 1-methyl-2,4-dinitro-                          |
| U105                | 121-14-2               | 2,4-Dinitrotoluene                                      |
| U106                | 606-20-2               | Benzene, 2-methyl-1,3-dinitro-                          |
| U106                | 606-20-2               | 2,6-Dinitrotoluene                                      |
| U107                | 117-84-0               | 1,2-Benzenedicarboxylic acid, dioctyl ester             |
| U107                | 117-84-0               | Di-n-octyl phthalate                                    |
| U108                | 123-91-1               | 1,4-Diethyleneoxide                                     |
| U108                | 123-91-1               | 1,4-Dioxane   |
| U109                | 122-66-7               | 1,2-Diphenylhydrazine                                   |
| U109                | 122-66-7               | Hydrazine, 1,2-diphenyl-                                |
| U110                | 142-84-7               | Dipropylamine (I)                                       |
| U110                | 142-84-7               | 1-Propanamine, N-propyl-(I)                             |
| U111                | 621-64-7               | Di-n-propylnitrosamine                                  |
| U111                | 621-64-7               | 1-Propanamine, N-nitroso-N-propyl-                      |
| U112                | 141-78-6               | Acetic acid ethyl ester (I)                             |
| U112                | 141-78-6               | Ethyl acetate (I)                                       |
| U113                | 140-88-5               | Ethyl acrylate (I)                                      |
| U113                | 140-88-5               | 2-Propenoic acid, ethyl ester (I)                       |
| U114                | 111-54-6               | Carbamodithioic acid, 1,2-ethanediybis-, salts & esters |
| U114                | 111-54-6               | Ethylenebisdithiocarbamic acid, salts & esters          |
| U115                | 75-21-8                | Ethylene oxide (I,T)                                    |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U115                | 75-21-8                | Oxirane (I,T)  |
| U116                | 96-45-7                | Ethylenethiourea   |
| U116                | 96-45-7                | 2-Imidazolidinethione  |
| U117                | 60-29-7                | Ethane, 1,1'-oxybis-(I)  |
| U117                | 60-29-7                | Ethyl ether (I)  |
| U118                | 97-63-2                | Ethyl methacrylate   |
| U118                | 97-63-2                | 2-Propenoic acid, 2-methyl-,ethyl ester  |
| U119                | 62-50-0                | Ethyl methanesulfonate   |
| U119                | 62-50-0                | Methanesulfonic acid, ethyl ester  |
| U120                | 206-44-0               | Fluoranthene   |
| U121                | 75-69-4                | Methane, trichlorofluoro-  |
| U121                | 75-69-4                | Trichloromonofluoromethane   |
| U122                | 50-00-0                | Formaldehyde   |
| U123                | 64-18-6                | Formic acid (C,T)  |
| U124                | 110-00-9               | Furan (I)  |
| U124                | 110-00-9               | Furfuran (I)   |
| U125                | 98-01-1                | 2-Furancarboxaldehyde (I)  |
| U125                | 98-01-1                | Furfural (I)   |
| U126                | 765-34-4               | Glycidylaldehyde   |
| U126                | 765-34-4               | Oxiranecarboxyaldehyde   |
| U127                | 118-74-1               | Benzene, hexachloro-   |
| U127                | 118-74-1               | Hexachlorobenzene  |
| U128                | 87-68-3                | 1,3-Butadiene, 1,1,2,3,4,4-hexachloro-   |
| U128                | 87-68-3                | Hexachlorobutadiene  |
| U129                | 58-89-9                | Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)- |
| U129                | 58-89-9                | Lindane  |
| U130                | 77-47-4                | 1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-                                     |
| U130                | 77-47-4                | Hexachlorocyclopentadiene  |
| U131                | 67-72-1                | Ethane, hexachloro-  |
| U131                | 67-72-1                | Hexachloroethane   |
| U132                | 70-30-4                | Hexachlorophene  |
| U132                | 70-30-4                | Phenol, 2,2'-methylenebis[3,4,6-trichloro-                                       |
| U133                | 302-01-2               | Hydrazine (R,T)  |
| U134                | 7664-39-3              | Hydrofluoric acid (C,T)  |
| U134                | 7664-39-3              | Hydrogen fluoride (C,T)  |
| U135                | 7783-06-4              | Hydrogen sulfide   |
| U135                | 7783-06-4              | Hydrogen sulfide H2S   |
| U136                | 75-60-5                | Arsinic acid, dimethyl-  |
| U136                | 75-60-5                | Cacodylic acid   |
| U137                | 193-39-5               | Indeno[1,2,3-cd]pyrene   |
| U138                | 74-88-4                | Methane, iodo-   |
| U138                | 74-88-4                | Methyl iodide  |
| U140                | 78-83-1                | Isobutyl alcohol (I,T)   |
| U140                | 78-83-1                | 1-Propanol, 2-methyl- (I,T)  |
| U141                | 120-58-1               | 1,3-Benzodioxole, 5-(1-propenyl)-  |
| U141                | 120-58-1               | Isosafrole   |
| U142                | 143-50-0               | Kepon  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U142                | 143-50-0               | 1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-  |
| U143                | 303-34-4               | 2-Butenoic acid, 2-methyl-, 7-[[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]- |
| U143                | 303-34-4               | Lasiocarpine  |
| U144                | 301-04-2               | Acetic acid, lead(2+) salt  |
| U144                | 301-04-2               | Lead acetate  |
| U145                | 7446-27-7              | Lead phosphate  |
| U145                | 7446-27-7              | Phosphoric acid, lead(2+)salt (2:3)   |
| U146                | 1335-32-6              | Lead, bis(acetato-O)tetrahydroxytri-  |
| U146                | 1335-32-6              | Lead subacetate   |
| U147                | 108-31-6               | 2,5-Furandione  |
| U147                | 108-31-6               | Maleic anhydride  |
| U148                | 123-33-1               | Maleic hydrazide  |
| U148                | 123-33-1               | 3,6-Pyridazinedione, 1,2-dihydro-   |
| U149                | 109-77-3               | Malononitrile   |
| U149                | 109-77-3               | Propanedinitrile  |
| U150                | 148-82-3               | Melphalan   |
| U150                | 148-82-3               | L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-   |
| U151                | 7439-97-6              | Mercury   |
| U152                | 126-98-7               | Methacrylonitrile (I,T)   |
| U152                | 126-98-7               | 2-Propenenitrile, 2-methyl- (I,T)   |
| U153                | 74-93-1                | Methanethiol (I,T)  |
| U153                | 74-93-1                | Thiomethanol (I,T)  |
| U154                | 67-56-1                | Methanol (I)  |
| U154                | 67-56-1                | Methyl alcohol (I)  |
| U155                | 91-80-5                | 1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-  |
| U155                | 91-80-5                | Methapyrilene   |
| U156                | 79-22-1                | Carbonochloridic acid, methylester (I,T)  |
| U156                | 79-22-1                | Methyl chlorocarbonate (I,T)  |
| U157                | 56-49-5                | Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-   |
| U157                | 56-49-5                | 3-Methylcholanthrene  |
| U158                | 101-14-4               | Benzenamine, 4,4'-methylenebis[2-chloro-  |
| U158                | 101-14-4               | 4,4'-Methylenebis(2-chloroaniline)  |
| U159                | 78-93-3                | 2-Butanone (I,T)  |
| U159                | 78-93-3                | Methyl ethyl ketone (MEK) (I,T)   |
| U160                | 1338-23-4              | 2-Butanone, peroxide (R,T)  |
| U160                | 1338-23-4              | Methyl ethyl ketone peroxide (R,T)  |
| U161                | 108-10-1               | Methyl isobutyl ketone (I)  |
| U161                | 108-10-1               | 4-Methyl-2-pentanone (I)  |
| U161                | 108-10-1               | Pentanol, 4-methyl-   |
| U162                | 80-62-6                | Methyl methacrylate (I,T)   |
| U162                | 80-62-6                | 2-Propenoic acid, 2-methyl-,methyl ester (I,T)  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U163                | 70-25-7                | Guanidine, -methyl-N'-nitro-N-nitroso-             |
| U163                | 70-25-7                | MNNG   |
| U164                | 56-04-2                | Methylthiouracil                                   |
| U164                | 56-04-2                | 4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo- |
| U165                | 91-20-3                | Naphthalene  |
| U166                | 130-15-4               | 1,4-Naphthalenedione                               |
| U166                | 130-15-4               | 1,4-Naphthoquinone                                 |
| U167                | 134-32-7               | 1-Naphthalenamine                                  |
| U167                | 134-32-7               | alpha-Naphthylamine                                |
| U168                | 91-59-8                | 2-Naphthalenamine                                  |
| U168                | 91-59-8                | beta-Naphthylamine                                 |
| U169                | 98-95-3                | Benzene, nitro-                                    |
| U169                | 98-95-3                | Nitrobenzene (I,T)                                 |
| U170                | 100-02-7               | p-Nitrophenol                                      |
| U170                | 100-02-7               | Phenol, 4-nitro-                                   |
| U171                | 79-46-9                | 2-Nitropropane (I,T)                               |
| U171                | 79-46-9                | Propane, 2-nitro- (I,T)                            |
| U172                | 924-16-3               | 1-Butanamine, N-butyl-N-nitroso-                   |
| U172                | 924-16-3               | N-Nitrosodi-n-butylamine                           |
| U173                | 1116-54-7              | Ethanol, 2,2'- (nitrosoimino)bis-                  |
| U173                | 1116-54-7              | N-Nitrosodiethanolamine                            |
| U174                | 55-18-5                | Ethanamine, -ethyl-N-nitroso-                      |
| U174                | 55-18-5                | N-Nitrosodiethylamine                              |
| U176                | 759-73-9               | N-Nitroso-N-ethylurea                              |
| U176                | 759-73-9               | Urea, N-ethyl-N-nitroso-                           |
| U177                | 684-93-5               | N-Nitroso-N-methylurea                             |
| U177                | 684-93-5               | Urea, N-methyl-N-nitroso-                          |
| U178                | 615-53-2               | Carbamic acid, methylnitroso-, ethyl ester         |
| U178                | 615-53-2               | N-Nitroso-N-methylurethane                         |
| U179                | 100-75-4               | N-Nitrosopiperidine                                |
| U179                | 100-75-4               | Piperidine, 1-nitroso-                             |
| U180                | 930-55-2               | N-Nitrosopyrrolidine                               |
| U180                | 930-55-2               | Pyrrolidine, 1-nitroso-                            |
| U181                | 99-55-8                | Benzenamine, 2-methyl-5-nitro-                     |
| U181                | 99-55-8                | 5-Nitro-o-toluidine                                |
| U182                | 123-63-7               | 1,3,5-Trioxane, 2,4,6-trimethyl-                   |
| U182                | 123-63-7               | Paraldehyde  |
| U183                | 608-93-5               | Benzene, pentachloro-                              |
| U183                | 608-93-5               | Pentachlorobenzene                                 |
| U184                | 76-01-7                | Ethane, pentachloro-                               |
| U184                | 76-01-7                | Pentachloroethane                                  |
| U185                | 82-68-8                | Benzene, pentachloronitro-                         |
| U185                | 82-68-8                | Pentachloronitrobenzene (PCNB)                     |
| U186                | 504-60-9               | 1-Methylbutadiene (I)                              |
| U186                | 504-60-9               | 1,3-Pentadiene (I)                                 |
| U187                | 62-44-2                | Acetamide, -(4-ethoxyphenyl)-                      |
| U187                | 62-44-2                | Phenacetin   |
| U188                | 108-95-2               | Phenol   |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U189                | 1314-80-3              | Phosphorus sulfide (R)   |
| U189                | 1314-80-3              | Sulfur phosphide (R)   |
| U190                | 85-44-9                | 1,3-Isobenzofurandione   |
| U190                | 85-44-9                | Phthalic anhydride   |
| U191                | 109-06-8               | 2-Picoline   |
| U191                | 109-06-8               | Pyridine, 2-methyl-  |
| U192                | 23950-58-5             | Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-   |
| U192                | 23950-58-5             | Pronamide  |
| U193                | 1120-71-4              | 1,2-Oxathiolane, 2,2-dioxide   |
| U193                | 1120-71-4              | 1,3-Propane sultone  |
| U194                | 107-10-8               | 1-Propanamine (I,T)  |
| U194                | 107-10-8               | n-Propylamine (I,T)  |
| U196                | 110-86-1               | Pyridine   |
| U197                | 106-51-4               | p-Benzoquinone   |
| U197                | 106-51-4               | 2,5-Cyclohexadiene-1,4-dione   |
| U200                | 50-55-5                | Reserpine  |
| U200                | 50-55-5                | Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyloxy]-, methylester,(3beta,16beta,17alpha,18beta,20alpha)- |
| U201                | 108-46-3               | 1,3-Benzenediol  |
| U201                | 108-46-3               | Resorcinol   |
| U203                | 94-59-7                | 1,3-Benzodioxole, 5-(2-propenyl)-  |
| U203                | 94-59-7                | Safrole  |
| U204                | 7783-00-8              | Selenious acid   |
| U204                | 7783-00-8              | Selenium dioxide   |
| U205                | 7488-56-4              | Selenium sulfide   |
| U205                | 7488-56-4              | Selenium sulfide SeS2 (R,T)  |
| U206                | 18883-66-4             | Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-   |
| U206                | 18883-66-4             | D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)-carbonyl]amino]-  |
| U206                | 18883-66-4             | Streptozotocin   |
| U207                | 95-94-3                | Benzene, 1,2,4,5-tetrachloro-  |
| U207                | 95-94-3                | 1,2,4,5-Tetrachlorobenzene   |
| U208                | 630-20-6               | Ethane, 1,1,1,2-tetrachloro-   |
| U208                | 630-20-6               | 1,1,1,2-Tetrachloroethane  |
| U209                | 79-34-5                | Ethane, 1,1,2,2-tetrachloro-   |
| U209                | 79-34-5                | 1,1,2,2-Tetrachloroethane  |
| U210                | 127-18-4               | Ethene, tetrachloro-   |
| U210                | 127-18-4               | Tetrachloroethylene  |
| U211                | 56-23-5                | Carbon tetrachloride   |
| U211                | 56-23-5                | Methane, tetrachloro-  |
| U213                | 109-99-9               | Furan, tetrahydro-(I)  |
| U213                | 109-99-9               | Tetrahydrofuran (I)  |
| U214                | 563-68-8               | Acetic acid, thallium(1+)salt  |
| U214                | 563-68-8               | Thallium(I) acetate  |
| U215                | 6533-73-9              | Carbonic acid, dithallium(1+) salt   |
| U215                | 6533-73-9              | Thallium(I) carbonate  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U216                | 7791-12-0              | Thallium(I) chloride   |
| U216                | 7791-12-0              | Thallium chloride TlCl   |
| U217                | 10102-45-1             | Nitric acid, thallium(1+) salt   |
| U217                | 10102-45-1             | Thallium(I) nitrate  |
| U218                | 62-55-5                | Ethanethioamide  |
| U218                | 62-55-5                | Thioacetamide  |
| U219                | 62-56-6                | Thiourea   |
| U220                | 108-88-3               | Benzene, methyl-   |
| U220                | 108-88-3               | Toluene  |
| U221                | 25376-45-8             | Benzenediamine, ar-methyl-   |
| U221                | 25376-45-8             | Toluenediamine   |
| U222                | 636-21-5               | Benzenamine, 2-methyl-,hydrochloride   |
| U222                | 636-21-5               | o-Toluidine hydrochloride  |
| U223                | 26471-62-5             | Benzene, 1,3-diisocyanatomethyl-(R,T)  |
| U223                | 26471-62-5             | Toluene diisocyanate (R,T)   |
| U225                | 75-25-2                | Bromoform  |
| U225                | 75-25-2                | Methane, tribromo-   |
| U226                | 71-55-6                | Ethane, 1,1,1-trichloro-   |
| U226                | 71-55-6                | Methyl chloroform  |
| U226                | 71-55-6                | 1,1,1-Trichloroethane  |
| U227                | 79-00-5                | Ethane, 1,1,2-trichloro-   |
| U227                | 79-00-5                | 1,1,2-Trichloroethane  |
| U228                | 79-01-6                | Ethene, trichloro-   |
| U228                | 79-01-6                | Trichloroethylene  |
| U234                | 99-35-4                | Benzene, 1,3,5-trinitro-   |
| U234                | 99-35-4                | 1,3,5-Trinitrobenzene (R,T)  |
| U235                | 126-72-7               | 1-Propanol, 2,3-dibromo-,phosphate (3:1)   |
| U235                | 126-72-7               | Tris(2,3-dibromopropyl) phosphate  |
| U236                | 72-57-1                | 2,7-Naphthalenedisulfonicacid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt |
| U236                | 72-57-1                | Trypan blue  |
| U237                | 66-75-1                | 2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-  |
| U237                | 66-75-1                | Uracil mustard   |
| U238                | 51-79-6                | Carbamic acid, ethyl ester   |
| U238                | 51-79-6                | Ethyl carbamate (urethane)   |
| U239                | 1330-20-7              | Benzene, dimethyl- (I)   |
| U239                | 1330-20-7              | Xylene (I)   |
| U240                | 194-75-7               | Acetic acid, (2,4-dichlorophenoxy)-, salts & esters  |
| U240                | 194-75-7               | 2,4-D, salts & esters  |
| U243                | 1888-71-7              | Hexachloropropene  |
| U243                | 1888-71-7              | 1-Propene, 1,1,2,3,3,3-hexachloro-   |
| U244                | 137-26-8               | Thioperoxydicarbonic diamide [(H2N)C(S)]2 S2, tetramethyl-   |
| U244                | 137-26-8               | Thiram   |
| U246                | 506-68-3               | Cyanogen bromide (CN)Br  |
| U247                | 72-43-5                | Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-  |

## Numerical List

| Dangerous Waste No. | Chemical Abstracts No. | Substance   |
|---------------------|------------------------|---|
| U247                | 72-43-5                | Methoxychlor  |
| U248                | 181-81-2               | 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less |
| U248                | 181-81-2               | Warfarin, & salts, when present at concentrations of 0.3% or less   |
| U249                | 1314-84-7              | Zinc phosphide Zn3 P2, when present at concentrations of 10% or less  |
| U271                | 17804-35-2             | Benomyl   |
| U271                | 17804-35-2             | Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methylester  |
| U278                | 22781-23-3             | Bendiocarb  |
| U278                | 22781-23-3             | 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate   |
| U279                | 63-25-2                | Carbaryl  |
| U279                | 63-25-2                | 1-Naphthalenol, methylcarbamate   |
| U280                | 101-27-9               | Barban  |
| U280                | 101-27-9               | Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester  |
| U328                | 95-53-4                | Benzenamine, 2-methyl-  |
| U328                | 95-53-4                | o-Toluidine   |
| U353                | 106-49-0               | Benzenamine, 4-methyl-  |
| U353                | 106-49-0               | p-Toluidine   |
| U359                | 110-80-5               | Ethanol, 2-ethoxy-  |
| U359                | 110-80-5               | Ethylene glycol monoethylether  |
| U364                | 22961-82-6             | Bendiocarb phenol   |
| U364                | 22961-82-6             | 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-Carbofuran phenol                     |
| U367                | 1563-38-8              | Carbamic acid, 1H-benzimidazol-2-yl, methylester  |
| U367                | 1563-38-8              | Carbendazim   |
| U372                | 10605-21-7             | Carbamic acid, phenyl-, 1-methylethyl ester   |
| U372                | 10605-21-7             | Propham   |
| U373                | 122-42-9               | Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester   |
| U373                | 122-42-9               | Prosulfocarb  |
| U387                | 52888-80-9             | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester                                       |
| U387                | 52888-80-9             | Triallate   |
| U389                | 2303-17-5              | A2213   |
| U389                | 2303-17-5              | Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester   |
| U394                | 30558-43-1             | Diethylene glycol, dicarbamate  |
| U394                | 30558-43-1             | Ethanol, 2,2'-oxybis-,dicarbamate   |
| U395                | 5952-26-1              | Ethanamine, N,N-diethyl-  |
| U395                | 5952-26-1              | Triethylamine   |
| U404                | 121-44-8               | Carbamic acid, [1,2-phenylenebis(imino-carbonothioyl)]bis-,dimethyl ester   |
| U404                | 121-44-8               | Thiophanate-methyl  |
| U409                | 23564-05-8             |   |
| U409                | 23564-05-8             |   |

**Numerical List**

| Dangerous Waste No. | Chemical Abstracts No. | Substance  |
|---------------------|------------------------|--|
| U410                | 59669-26-0             | Ethanimidothioic acid, N,N'-[thio-bis[(methylimino)carbonyloxy]]bis-, dimethyl ester |
| U410                | 59669-26-0             | Thiodicarb   |
| U411                | 114-26-1               | Phenol, 2-(1-methylethoxy)-, methylcarbamate   |
| U411                | 114-26-1               | Propoxur   |
| See F027            | 93-76-5                | Acetic acid, (2,4,5-trichlorophenoxy)-   |
| See F027            | 87-86-5                | Pentachlorophenol  |
| See F027            | 87-86-5                | Phenol, pentachloro-   |
| See F027            | 58-90-2                | Phenol, 2,3,4,6-tetrachloro-   |
| See F027            | 95-95-4                | Phenol, 2,4,5-trichloro-   |
| See F027            | 88-06-2                | Phenol, 2,4,6-trichloro-   |
| See F027            | 93-72-1                | Propanoic acid, 2-(2,4,5-trichlorophenoxy)-  |
| See F027            | 93-72-1                | Silvex (2,4,5-TP)  |
| See F027            | 93-76-5                | 2,4,5-T  |
| See F027            | 58-90-2                | 2,3,4,6-Tetrachlorophenol  |
| See F027            | 95-95-4                | 2,4,5-Trichlorophenol  |
| See F027            | 88-06-2                | 2,4,6-Trichlorophenol  |

FOOTNOTE: <sup>1</sup>CAS Number given for parent compound only.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 15-01-123, filed 12/18/14, effective 1/18/15)

**WAC 173-303-9904 Dangerous waste sources list.**

The following Hazard Codes are used to indicate the basis EPA used for listing the classes or types of wastes listed in this section:

|                               |     |
|-------------------------------|-----|
| Ignitable Waste               | (I) |
| Corrosive Waste               | (C) |
| Reactive Waste                | (R) |
| Toxicity Characteristic Waste | (E) |
| Acute Hazardous Waste         | (H) |
| Toxic Waste                   | (T) |

DANGEROUS WASTE SOURCES LIST

| (1)<br>Dangerous Waste No. | Sources |
|----------------------------|---------|
|----------------------------|---------|

**Nonspecific Sources**

**Generic:**

- F001 The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)
- F002 The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane and 1,1,2 trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)
- F003 The following spent nonhalogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above nonhalogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I)

| (1)<br>Dangerous<br>Waste No. | Sources  | (1)<br>Dangerous<br>Waste No. | Sources   |
|-------------------------------|--|-------------------------------|---|
| F004                          | The following spent nonhalogenated solvents: Cresols and cresylic acid, nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)   | F012                          | Quenching wastewater treatment sludges from metal heat-treating operations where cyanides are used in the process. (T)  |
| F005                          | The following spent nonhalogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I,T) | F019                          | Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. (T)   |
| F006                          | Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)                                     | F020                          | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (See footnote 1, below.) (H)                              |
| F007                          | Spent cyanide plating bath solutions from electroplating operations. (R,T)   | F021                          | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. (See footnote 1, below.) (H)  |
| F008                          | Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process. (R,T)  | F022                          | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (See footnote 1, below.) (H)   |
| F009                          | Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (R,T)   | F023                          | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (See footnote 1, below.) (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H) |
| F010                          | Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. (R,T)   |                               |   |
| F011                          | Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. (R,T)   |                               |   |

| (1)<br>Dangerous<br>Waste No. | Sources   | (1)<br>Dangerous<br>Waste No. | Sources  |
|-------------------------------|---|-------------------------------|--|
| F024                          | Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in this section.) (T) |                               | F032 waste code deleted in accordance with WAC 173-303-083 or potentially cross-contaminated wastes that are otherwise currently regulated as dangerous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)  |
| F025                          | Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (T)   | F034                          | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drip-page, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)   |
| F026                          | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. (See footnote 1, below.) (H)   | F035                          | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drip-page, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)  |
| F027                          | Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (See footnote 1, below.) (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) (H)  | F037                          | Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in:<br>Oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling ( <del>wastewaters</del> ) <u>waters</u> , sludges generated in aggressive biological treatment |
| F028                          | Residues resulting from the incineration or thermal treatment of soil contaminated with nonspecific sources wastes F020, F021, F022, F023, F026 and F027. (T)   |                               |  |
| F032                          | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drip-page, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the   |                               |  |

| (1)<br>Dangerous<br>Waste No. | Sources   |
|-------------------------------|---|
|                               | units as defined in footnote 2, below (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under WAC 173-303-071 (3)(cc)(i), if those residuals are to be disposed of. (See footnote 2, below.) (T)   |
| F038                          | Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: Induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in footnote 2, below (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. (See footnote 2, below.) (T) |
| F039                          | Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as dangerous under WAC 173-303-9903, 173-303-9904, and 173-303-9905. (Leachate resulting from the disposal of one or more of the following dangerous wastes, and no other dangerous wastes, retains its Dangerous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.) (T)  |

\*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

| (1)<br>Dangerous<br>Waste No. | Sources   |
|-------------------------------|---|
|                               | <b>Specific Sources</b>   |
|                               | <b>Wood Preservation:</b>   |
| K001                          | Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol. (T) |
|                               | <b>Inorganic Pigments:</b>  |
| K002                          | Wastewater treatment sludge from the production of chrome yellow and orange pigments. (T)   |
| K003                          | Wastewater treatment sludge from the production of molybdate orange pigments. (T)   |
| K004                          | Wastewater treatment sludge from the production of zinc yellow pigments. (T)  |
| K005                          | Wastewater treatment sludge from the production of chrome green pigments. (T)   |
| K006                          | Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). (T)                            |
| K007                          | Wastewater treatment sludge from the production of iron blue pigments. (T)  |
| K008                          | Oven residue from the production of chrome oxide green pigments. (T)  |
|                               | <b>Organic Chemicals:</b>   |
| K009                          | Distillation bottoms from the production of acetaldehyde from ethylene. (T)   |
| K010                          | Distillation side cuts from the production of acetaldehyde from ethylene. (T)   |
| K011                          | Bottom stream from the wastewater stripper in the production of acrylonitrile. (R,T)  |
| K013                          | Bottom stream from the acetonitrile column in the production of acrylonitrile. (R,T)  |
| K014                          | Bottoms from the acetonitrile purification column in the production of acrylonitrile. (T)   |
| K015                          | Still bottoms from the distillation of benzyl chloride. (T)   |
| K016                          | Heavy ends or distillation residues from the production of carbon tetrachloride. (T)  |
| K017                          | Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin. (T)                                       |
| K018                          | Heavy ends from the fractionation column in ethyl chloride production. (T)  |
| K019                          | Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. (T)  |

| (1)<br>Dangerous<br>Waste No. | Sources   | (1)<br>Dangerous<br>Waste No. | Sources  |
|-------------------------------|---|-------------------------------|--|
| K020                          | Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. (T)              | K107                          | Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. (C,T)  |
| K021                          | Aqueous spent antimony catalyst waste from fluoromethanes production. (T)                                 | K108                          | Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from the carboxylic acid hydrazides. (I,T) |
| K022                          | Distillation bottom tars from the production of phenol/acetone from cumene. (T)                           | K109                          | Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. (T)   |
| K023                          | Distillation light ends from the production of phthalic anhydride from naphthalene. (T)                   | K110                          | Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. (T)                                   |
| K024                          | Distillation bottoms from the production of phthalic anhydride from naphthalene. (T)                      | K111                          | Product washwaters from the production of dinitrotoluene via nitration of toluene. (C,T)   |
| K093                          | Distillation light ends from the production of phthalic anhydride from ortho-xylene. (T)                  | K112                          | Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)  |
| K094                          | Distillation bottoms from the production of phthalic anhydride from ortho-xylene. (T)                     | K113                          | Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)                                   |
| K025                          | Distillation bottoms from the production of nitrobenzene by the nitration of benzene. (T)                 | K114                          | Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)  |
| K026                          | Stripping still tails from the production of methyl ethyl pyridines. (T)                                  | K115                          | Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)  |
| K027                          | Centrifuge and distillation residues from toluene diisocyanate production. (R,T)                          | K116                          | Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine. (T)  |
| K028                          | Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. (T)          | K117                          | Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene. (T)   |
| K029                          | Waste from the product steam stripper in the production of 1,1,1-trichloroethane. (T)                     | K118                          | Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. (T)  |
| K095                          | Distillation bottoms from the production of 1,1,1-trichloroethane. (T)                                    | K136                          | Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. (T)   |
| K096                          | Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane. (T)                   |                               |  |
| K030                          | Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. (T) |                               |  |
| K083                          | Distillation bottoms from aniline production. (T)   |                               |  |
| K103                          | Process residues from aniline extraction from the production of aniline. (T)                              |                               |  |
| K104                          | Combined wastewater streams generated from nitrobenzene/aniline production. (T)                           |                               |  |
| K085                          | Distillation of fractionation column bottoms from the production of chlorobenzenes. (T)                   |                               |  |
| K105                          | Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. (T)   |                               |  |

| (1)<br>Dangerous<br>Waste No. | Sources  | (1)<br>Dangerous<br>Waste No. | Sources   |
|-------------------------------|--|-------------------------------|---|
| K149                          | Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.) (T)                          | K174                          | Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions:<br>(i) They are disposed of in a hazardous waste or nonhazardous landfill licensed or permitted by the state or federal government;<br>(ii) They are not otherwise placed on the land prior to final disposal; and<br>(iii) The generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off site landfill. Respondents in any action brought to enforce the requirements of the Hazardous Waste Management Act or dangerous waste regulations must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. (T) |
| K150                          | Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (T) | K175                          | Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. (T)  |
| K151                          | Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (T)         | K181                          | Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in subsection (3) of this section that are equal to or greater than the corresponding subsection (3) of this section levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are:   |
| K156                          | Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)                           |                               |   |
| K157                          | Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)   |                               |   |
| K158                          | Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)   |                               |   |
| K159                          | Organics from the treatment of thiocarbamate wastes. (T)   |                               |   |
| K161                          | Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (R,T)   |                               |   |

| (1)<br>Dangerous<br>Waste No. | Sources   | (1)<br>Dangerous<br>Waste No. | Sources  |
|-------------------------------|---|-------------------------------|--|
|                               | (i) Disposed in a municipal solid waste landfill unit subject to the design criteria in 40 C.F.R. 258.40;   | K106                          | Wastewater treatment sludge from the mercury cell process in chlorine production. (T)  |
|                               | (ii) Disposed in a dangerous waste landfill unit subject to either WAC 173-303-665(2) or 40 C.F.R. 265.301 (incorporated by reference at WAC 173-303-400 (3)(a));   | K176                          | Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (E)                                     |
|                               | (iii) Disposed in other municipal solid waste landfill units that meet the design criteria in 40 C.F.R. 258.40, WAC 173-303-665(2) or 40 C.F.R. 265.301 (incorporated by reference at WAC 173-303-400 (3)(a)); or   | K177                          | Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (T)      |
|                               | (iv) Treated in a combustion unit that is permitted under the Hazardous Waste Management Act and the dangerous waste regulations, or an on-site combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in subsection (2) of this section.  | K178                          | Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process. (T)                     |
|                               | Subsection (4) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as dangerous under WAC 173-303-090 (5) through (8), 173-303-100 (5) through (6), 173-303-9903, and 173-303-9904 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met. (T) | <b>Petroleum Refining:</b>    |  |
|                               |   | K048                          | Dissolved air flotation (DAF) float from the petroleum refining industry. (T)  |
|                               |   | K049                          | Slop oil emulsion solids from the petroleum refining industry. (T)   |
|                               |   | K050                          | Heat exchanger bundle cleaning sludge from the petroleum refining industry. (T)  |
|                               |   | K051                          | API separator sludge from the petroleum refining industry. (T)   |
|                               |   | K052                          | Tank bottoms (leaded) from the petroleum refining industry. (T)  |
|                               |   | K169                          | Crude oil storage tank sediment from petroleum refining operations. (T)  |
|                               |   | K170                          | Clarified slurry oil tank sediment and/or inline filter/separation solids from petroleum refining operations. (T)  |
|                               |   | K171                          | Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). (I,T) |
|                               |   | K172                          | Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). (I,T) |
|                               |   | <b>Iron and Steel:</b>        |  |
|                               |   | K061                          | Emission control dust/sludge from the primary production of steel in electric furnaces. (T)  |
| <b>Explosives:</b>            |   |                               |  |
| K044                          | Wastewater treatment sludges from the manufacturing and processing of explosives. (R)   |                               |  |
| K045                          | Spent carbon from the treatment of wastewater containing explosives. (R)  |                               |  |
| K046                          | Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds. (T)  |                               |  |
| K047                          | Pink/red water from TNT operations. (R)   |                               |  |
| <b>Inorganic Chemicals:</b>   |   |                               |  |
| K071                          | Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. (T)   |                               |  |
| K073                          | Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. (T)  |                               |  |

| (1)<br>Dangerous<br>Waste No. | Sources   | (1)<br>Dangerous<br>Waste No.      | Sources  |
|-------------------------------|---|------------------------------------|--|
| K062                          | Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (NAICS codes 331111 and 332111). (C,T) | K124                               | Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts. (C,T)   |
| <b>Pesticides:</b>            |   | K125                               | Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts. (T)  |
| K031                          | Byproduct salts generated in the production of MSMA and cacodylic acid. (T)   | K126                               | Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts. (T)  |
| K032                          | Wastewater treatment sludge from the production of chlordane. (T)   | K131                               | Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide. (C,T)   |
| K033                          | Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. (T)   | K132                               | Spent absorbent and wastewater separator solids from the production of methyl bromide. (T)   |
| K034                          | Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. (T)  | <b>Primary Aluminum:</b>           |  |
| K097                          | Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. (T)  | K088                               | Spent potliners from primary aluminum reduction. (T)   |
| K035                          | Wastewater treatment sludges generated in the production of creosote. (T)   | <b>Secondary Lead:</b>             |  |
| K036                          | Still bottoms from toluene reclamation distillation in the production of disulfoton. (T)  | K069                               | Emission control dust/sludge from secondary lead smelting. (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action affecting this stay, EPA will publish a notice of the action in the <i>Federal Register</i> .) (T) |
| K037                          | Wastewater treatment sludges from the production of disulfoton. (T)   | K100                               | Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. (T)   |
| K038                          | Wastewater from the washing and stripping of phorate production. (T)  | <b>Veterinary Pharmaceuticals:</b> |  |
| K039                          | Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. (T)  | K084                               | Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)   |
| K040                          | Wastewater treatment sludge from the production of phorate. (T)   | K101                               | Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)   |
| K041                          | Wastewater treatment sludge from the production of toxaphene. (T)   | K102                               | Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)  |
| K098                          | Untreated process wastewater from the production of toxaphene. (T)  |                                    |  |
| K042                          | Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. (T)                                   |                                    |  |
| K043                          | 2,6-Dichlorophenol waste from the production of 2,4-D. (T)  |                                    |  |
| K099                          | Untreated wastewater from the production of 2,4-D. (T)  |                                    |  |
| K123                          | Process wastewater (including supernates, filtrates, and wastewaters) from the production of ethylenebisdithiocarbamic acid and its salts. (T)      |                                    |  |

(1)  
 Dangerous  
 Waste No. Sources

**Ink Formulation:**

K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (T)

**Coking:**

K060 Ammonia still-lime sludge from coking operations. (T)

K087 Decanter tank tar sludge from coking operations. (T)

K141 Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).

K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.

K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144 Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recover of coke by-products produced from coal.

K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147 Tar storage tank residues from coal tar refining.

K148 Residues from coal tar distillation, including but not limited to, still bottoms.

**Footnotes**

1 For wastes listed with the dangerous waste numbers F020, F021, F022, F023, F026, or F027 the quantity exclusion limit is 2.2 lbs. (1 kg) per month or per batch.

2 Listing Specific Definitions:

a For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

b(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: Activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the units employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a dangerous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other on-site records, documents and data sufficient to prove that: (A) The unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

c(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) Floats are considered to be generated at the moment they are formed in the top of the unit.

**State Sources**

WPCB Discarded transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater (except when drained of all free flowing liquid) and the following wastes generated from the salvaging, rebuilding, or discarding of transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater: Cooling and insulating fluids and cores, including core papers. (Note—Certain PCB wastes are excluded from this listing under WAC 173-303-071 (3)(k). The generator should check that section to determine if their PCB waste is excluded from the requirements of chapter 173-303 WAC.)

(2) *Listing Specific Definitions:* For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: Dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products.

Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the off site use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(3) *K181 Listing Levels.* Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

| Constituent                    | Chemical Abstracts No. | Mass Levels (kg/yr) |
|--------------------------------|------------------------|---------------------|
| Aniline . . . . .              | 62-53-3                | 9,300               |
| o-Anisidine . . . . .          | 90-04-0                | 110                 |
| 4-Chloroaniline . . . . .      | 106-47-8               | 4,800               |
| p-Cresidine . . . . .          | 120-71-8               | 660                 |
| 2,4-Dimethylaniline . . . . .  | 95-68-1                | 100                 |
| 1,2-Phenylenediamine . . . . . | 95-54-5                | 710                 |
| 1,3-Phenylenediamine . . . . . | 108-45-2               | 1,200               |

(4) *Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181.* The procedures described in (a) through (c) and (e) of this subsection establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in subsection (1) - the K181 listing - of this section). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in subsection (1) of this section, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in (d) of this subsection.

(a) *Determination based on no K181 constituents.* Generators that have knowledge (for example, knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (*see* subsection (3) of this section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(b) *Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (for example, knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of subsection (3) of this section. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

- (ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of (c) of this subsection for the remainder of the year.
- (iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.
- (iv) Keep the following records on-site for the three most recent calendar years in which the hazardous waste determinations are made:
  - (A) The quantity of dyes and/or pigment nonwastewaters generated.
  - (B) The relevant process information used.
  - (C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.
- (c) *Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in (c)(i) through (xi) of this subsection in order to make a determination that its waste is not K181.
  - (i) Determine which K181 constituents (see subsection (3) of this section) are reasonably expected to be present in the wastes based on knowledge of the wastes (for example, based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).
  - (ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in (b) of this subsection and keep the records described in (b)(iv) of this subsection. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this subsection.
    - (iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:
      - (A) A discussion of the number of samples needed to characterize the wastes fully;
      - (B) The planned sample collection method to obtain representative waste samples;
      - (C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes;
      - (D) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.
    - (iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.
      - (A) The sampling and analysis must be unbiased, precise, and representative of the wastes;
      - (B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of subsection (3) of this section.
    - (v) Record the analytical results.
    - (vi) Record the waste quantity represented by the sampling and analysis results.
    - (vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).
    - (viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.
    - (ix) Determine whether the mass of any of the K181 constituents listed in subsection (3) of this section generated between January 1 and December 31 of any year is below the K181 listing levels.
      - (x) Keep the following records on-site for the three most recent calendar years in which the hazardous waste determinations are made:
        - (A) The sampling and analysis plan.
        - (B) The sampling and analysis results (including QA/QC data).
        - (C) The quantity of dyes and/or pigment nonwastewaters generated.
        - (D) The calculations performed to determine annual mass loadings.

- (xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.
- (A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.
- (B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.
- (C) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.
- (d) *Recordkeeping for the landfill disposal and combustion exemptions.* For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on-site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.
- (e) *Waste holding and handling.* During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the Hazardous Waste Management Act and the dangerous waste regulation requirements during the interim period, the generator could be subject to an enforcement action for improper management.

**WSR 18-17-062****PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed August 9, 2018, 1:14 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-221-010, Occupational dose limits for adults, the department of health (DOH) proposes to make a correction in word usage to align with federal regulations.

Hearing Location(s): On September 25, 2018, at 10:00 a.m., at DOH, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: October 1, 2018.

Submit Written Comments to: Theresa Phillips, DOH, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by September 25, 2018.

Assistance for Persons with Disabilities: Contact Theresa Phillips, phone 360-236-3147, TTY 360-833-6388 or 711, email [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@doh.wa.gov), by September 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal makes a correction to an error in a previous rule making. The proposed rule makes a technical correction to WAC 246-221-010 (1)(a)(ii) to remove the word "effective" and replace it with the word "deep" so it aligns with 10 Code of Federal Regulations 20.1201 (a)(1)(ii). This change enables DOH to remain compatible with United States Nuclear Regulator [Regulatory] Commission (NRC) regulations. The proposed rule makes Washington state rules consistent with NRC regulations. Under the formal state agreement between the governor and NRC, DOH (the state radiation control program) is required to remain compatible with NRC regulations.

Reasons Supporting Proposal: This rule making is required to comply with RCW 70.98.050 (4)(d) and a formal agreement signed between the state of Washington and the atomic energy commission under section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. sec. 2021), the Energy Policy Action of 2005.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 56 F.R. 23396, 10 C.F.R. 20.1201 (a)(1)(ii).

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation and Enforcement: Kristen Schwab, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3241.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rule of other Washington state agencies, or national consensus codes that generally establish industry standards.

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: A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(c), an SBEIS is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

Is exempt under RCW 19.85.025(3) as the 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 statewide 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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rule[s] of other Washington state agencies, or national consensus codes that generally establish industry standards.

August 2, 2018  
Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 14-01-077, filed 12/16/13, effective 1/16/14)

**WAC 246-221-010 Occupational dose limits for adults.** (1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to WAC 246-221-030, to the following dose limits:

- (a) An annual limit, which is the more limiting of:
  - (i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or
  - (ii) The sum of the ~~((effective))~~ deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).
- (b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:
  - (i) A lens dose equivalent of 0.15 Sv (15 rem); and
  - (ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits specified in WAC 246-221-030 for planned special expo-

sure that the individual may receive during the current year and during the individual's lifetime.

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC or the department. The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of the individual monitoring are unavailable.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in WAC 246-221-290 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year as determined in accordance with WAC 246-221-020.

**WSR 18-17-065**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 9, 2018, 1:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-011.

Title of Rule and Other Identifying Information: Amends WAC 181-77-003, 181-77-005, 181-77-014, 181-77-015, 181-77-031, 181-77-041, 181-77-068, 181-77-071, 181-77-081, and 181-77-120, this revision follows a year long review of certification regulations for career and technical education (CTE) programs and educators. The amendments align renewal requirements for all CTE certificates with the standards for renewing basic education certificates. The amendments also address limited certificates, merging two limited certificates into one that contains the requirements for both.

Hearing Location(s): On September 27, 2018, at 8:30 a.m., at the DoubleTree, 322 North Spokane Falls Court, Spokane, WA 99201.

Date of Intended Adoption: September 27, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by September 20, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by September 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies and aligns CTE certification requirements.

Reasons Supporting Proposal: CTE certification rules have not been updated to reflect changes in educator licensure. These amendments are supported by the CTE field and headquarters.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The professional educator standards board (PESB) initiated these changes to clarify requirements.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: 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.

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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 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.

August 9, 2018  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-07-018, filed 3/7/17, effective 4/7/17)

**WAC 181-77-003 Definitions.** The following definitions shall apply to terms used in this chapter:

(1) "Approved program for training career and technical education teachers and career and technical education counselors" shall be defined as any program approved by the professional educator standards board which complies with chapter 181-77A WAC.

(2) "Career and technical education educator training" shall mean those career and technical education programs, courses, seminars and workshops offered for the purpose of career and technical education certification in compliance with chapter 181-85 WAC.

(3) "General safety" shall mean course work approved by the professional educator standards board and/or its designee that is designed to provide skill and knowledge common to all career and technical education instructors in safety.

(4) "Specific safety requirements" shall mean completion of course work approved by the professional educator standards board and/or its designee which is designed to provide the career and technical education instructor with the specific skill and knowledge of safety for the occupation he or she is to teach.

(5) "Learning period" shall mean the amount of time required prior to becoming gainfully employed at the (~~journeyman or equivalent~~) journey level in the occupation being taught. In any case, this shall be no less than one year.

(6) "Management experience" shall mean work as a supervisor (~~foreman~~) or manager in the occupational area in which the person will instruct.

(7) "Occupational experience" shall mean paid or unpaid volunteer work experience in the career field to be taught.

(8) "One year of occupational experience" shall equal two thousand hours of employment.

(9) "Professional education" shall mean those programs, courses, seminars and workshops that are designed to improve teaching ability.

(10) "Professional experience" shall mean employment in career and technical education in the discipline and/or specialty for which the application has been submitted.

(11) "Quarter hours or the equivalent" shall mean one quarter credit, two-thirds semester credit, ten clock hours or one hundred hours of occupational experience.

(12) "Technical education/upgrading" shall mean those career and technical education programs, courses, seminars and workshops which are designed to improve the skills and/or knowledge in the discipline in which the application is being made.

(13) "Professional growth plan" is as described in WAC 181-79A-030.

AMENDATORY SECTION (Amending WSR 10-23-074, filed 11/15/10, effective 12/16/10)

**WAC 181-77-005 Types of career and technical education certificates.** The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) Family and consumer sciences education;
- (d) Technology education;
- (e) Trade and industrial;
- (f) Health occupations;
- (g) Career choices;
- (h) Coordinator for worksite learning; or
- (i) (~~New and emerging fields;~~

(j)) Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold a baccalaureate degree or higher in a math-related area such as engineering from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

(D) Pass the mathematics subject knowledge test approved by the professional educator standards board; and

(E) Document a minimum of one year teaching experience in technology education or skilled and technical science courses.

(ii) Science applied, biology applied, chemistry applied, physics applied, or earth and space science applied. To add these categories, the candidate shall:

(A) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold a baccalaureate degree or higher in a science-related area such as engineering or in a medical field from ~~((a regionally))~~ an accredited college or university pursuant to WAC 181-79A-030~~((5))~~);

(C) Be fully contracted as a teacher or long-term substitute by a Washington public school;

(D) Pass the appropriate science, biology, chemistry, physics, or earth and space science subject knowledge test approved by the professional educator standards board; and

(E) Document a minimum of one year teaching experience in agriculture education, health occupations, or skilled and technical science courses.

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

AMENDATORY SECTION (Amending WSR 17-07-018, filed 3/7/17, effective 4/7/17)

**WAC 181-77-014 Requirements for limited certification.** ~~((1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district and verification of CTE program enrollment or completion if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.~~

The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.

~~(a) Such a certificate may be issued upon recommendation by the employing school district.~~

~~(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advisory~~

~~committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:~~

~~(i) Issues related to legal liability;~~

~~(ii) The responsibilities of professional career and technical education educators; and~~

~~(iii) The lines of authority in the employing school district and/or building.~~

~~Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:~~

~~(iv) Career and technical education methods; and~~

~~(v) General and specific safety.~~

~~If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.~~

~~(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.~~

~~(vii) Provided, That candidates for probationary certificates as a coordinator of worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.~~

~~(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one year)) Conditional career and technical education certificate.~~

~~(1) Intent: The intent of the conditional career and technical education certificate is to fill teacher positions given specific circumstances where no regularly certificated career and technical education instructor is available.~~

~~(2) Role: The certificate is valid only for the teaching areas specified on the certificate.~~

~~(3) Request requirements:~~

~~(a) The conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service((:~~

~~((a))), The issuance of the conditional career and technical education certificate may be issued only ~~((under unique and special circumstances where no regularly certificated career and technical education instructor is available and is limited))~~ to:~~

~~(i) Persons ~~((highly))~~ qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or~~

~~(ii) Persons who meet the occupational experience requirements for career and technical education certification; or~~

~~(iii) Persons enrolled in a career and technical education preparation program as verified by an approved career and technical education program provider; or~~

(iv) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent; and

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area; and

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment; and

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment; and

(v) A written ~~((work and/or educational experience))~~ training plan ~~((as specified in WAC 181-77-014 (1)(b)))~~ is on file with the employing district. The career and technical education administrator and the candidate will mutually develop this plan. The plan must be approved by the local school district career and technical education program advisory committee to which the candidate is assigned. The plan will provide for the career and technical education instructor to develop competencies in the following:

(A) Issues related to legal liability;

(B) The responsibilities of career and technical education educators;

(C) The lines of authority in the employing school district and/or building;

(D) Career and technical education methods;

(E) General and specific safety.

(4) Minimum requirements: The career and technical education teacher will complete fifty continuing education credit hours subsequent to the issuance of the certificate, and prior to the reissuance of the certificate. The continuing education credit hours must relate to the areas listed in subsection (3)(a)(v) of this section. This continuing education credit hour requirement may be completed through credit hours earned while enrolled in a program.

~~((e))~~ (5) Validity: The certificate is valid for ~~((one school))~~ two years or less, and only for the teaching area specified on the certificate. The certificate may be reissued on district application and evidence that requirements continue to be met.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-77-015 Certificate validity and renewal.**

(1) The initial certificate is valid for ~~((four))~~ five years and

may be renewed ~~((two times))~~ in accordance with WAC 181-77-031 or 181-77-041.

(2) The initial renewal certificate is valid for ~~((three))~~ five years and may be renewed ~~((one time))~~ in accordance with WAC 181-77-031 ~~((2)(a))~~ or 181-77-041 ~~((2)(a))~~.

(3) The continuing certificate is valid for five years and may be renewed ~~((every five years))~~ in accordance with WAC 181-77-031(4) or 181-77-041(4).

AMENDATORY SECTION (Amending WSR 18-08-007, filed 3/22/18, effective 4/22/18)

**WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area.** Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from ~~((a regionally))~~ an accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the career and technical education areas: Agriculture education, business and marketing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through ~~((a regionally))~~ an accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their basic education certificate in their subject area, take and pass the content knowledge test(s) for subject area, be issued the residency teacher certificate before the CTE initial can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete ~~((three quarter hours of credit or thirty clock hours of career and technical education educator training))~~ one hundred continuing education credit hours in the subject area certified to teach since the initial certificate was issued, or ~~((renewed))~~ four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the

necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least ~~((nine))~~ fifteen quarter hours or ~~((ninety))~~ one hundred fifty clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal. Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate ~~((was issued one of the following))~~:

(a) ~~((Six))~~ Ten quarter hours or ~~((sixty))~~ one hundred clock hours of career and technical education educator training;

~~((b))~~ Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

~~((c))~~ Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience;

~~((d))~~ or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit

hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6);

~~((e) Provided, as))~~ (c) Per RCW 28A.410.278(2), in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

AMENDATORY SECTION (Amending WSR 18-08-007, filed 3/22/18, effective 4/22/18)

**WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience.** Candidates for certification who have not completed approved programs set forth in chapter 181-78A WAC shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or whose primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from industry experience (nonteaching). For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of industry experience. For biomedical and biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of industry experience.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance interview, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

- (i) General and specific safety;
- (ii) Career and technical education teaching methods;
- (iii) Occupational analysis;
- (iv) Course organization and curriculum design;
- (v) Philosophy of vocational education;
- (vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

- (i) School law;
- (ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete ~~((three))~~ ten quarter hours of credit or ~~((thirty))~~ one hundred clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least ~~((nine))~~ one of the following:

(i) Fifteen quarter hours or ~~((ninety))~~ one hundred fifty clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate; or

(ii) Hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued ~~((one of the following))~~:

(i) ~~((Six))~~ Ten quarter hours or ~~((sixty))~~ one hundred clock hours of career and technical education educator training(~~(;~~

~~(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;~~

~~(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.)), or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.~~

(ii) Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

(iii) Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

(iv) An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

(c) ~~((Provided, as))~~ Per RCW 28A.410.278(2) in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW

28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

(d) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410-271.

**AMENDATORY SECTION** (Amending WSR 17-13-060, filed 6/15/17, effective 7/16/17)

**WAC 181-77-068 Requirements for coordinator of worksite learning initial or continuing certificates.** To obtain a coordinator of worksite learning certificate, a candidate must:

(1) Possess a valid ~~((probationary))~~ limited, initial or continuing career and technical education teaching certificate; Provided that if the individual holds a limited certificate they must be enrolled in an approved program; and

(2) Successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

**AMENDATORY SECTION** (Amending WSR 17-22-136, filed 11/1/17, effective 12/2/17)

**WAC 181-77-071 Initial certification of career and technical education administrative personnel.** (1)(a) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one or more of the following:

~~((a))~~ (i) Currently holds a valid residency, continuing or professional administrator certificate; or

~~((b))~~ (ii) Completion of three years of experience as a certificated career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist; and

~~((c))~~ (b) In addition, the candidate must meet one or more of the following:

(i) Completion of the state authorized career and technical education administrator internship program; or

~~((d))~~ (ii) Completion of a state approved college program for career and technical education administration.

~~((e))~~ (c) The initial career and technical education administrator certificate is valid for ~~((four))~~ five years ~~((and may be renewed two times))~~.

(2) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least ~~((six))~~ ten quarter hours of college credit or ~~((sixty))~~ one hundred continuing education credit hours or four professional growth plans in five years since the initial certificate was issued or renewed is required. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for ~~((three))~~ five years and may be renewed ~~((one time))~~.

(3) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required; or, the individual may hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

~~((e))~~ Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:

~~((i))~~ In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and

~~((ii))~~ The completion of requirements listed in subsection (1)(c) or (d) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate.

(4) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of ~~((fifteen))~~ ten quarter credits of college credit course work or the equivalent of one hundred ~~((fifty))~~ continuing education credit hours in career and technical education, or supervisory or managerial subjects, or four professional growth plans, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates. Individuals

completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

(5) Per RCW 28A.410.278(2) in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

~~((5))~~ (6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection ~~((3))~~ (4) of this section.

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

**WAC 181-77-081 Requirements for certification of career guidance specialist.** Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one or more of the following:

(i) Completion of three years of experience as a certified career and technical education administrator, career and technical education instructor, or career and technical education counselor, at the initial or continuing certificate level; or

(ii) Hold a valid educational staff associate - Counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of three years (six thousand hours) of full-time paid occupational experience of which two years shall have been in the last six years, dealing with employment, personnel or with placement and evaluation of workers, or experience providing career guidance, employment or career counseling services.

(b) Such a certificate may be issued upon recommendation by the employing school district according to the following:

(i) The candidate shall have developed a ~~((professional growth))~~ written training plan in cooperation with the career and technical education administrator. The plan must be approved by a district career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the ~~((professional growth))~~ written training plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for ~~((four))~~ five years ~~((and may be renewed two times))~~.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved program provider or state approved continuing education provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical/legal issues;

(viii) Technology;

(ix) History and philosophy of career and technical education.

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least ~~((six))~~ ten quarter hours of college credit ~~((or sixty))~~, one hundred clock hours, or four professional growth plans since the initial certificate was issued or renewed. ~~((Provided,))~~ At least two quarter credits or fifteen clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for ~~((three))~~ five years ~~((and may be renewed one time))~~.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours of college credit or one hundred fifty clock hours completed subsequent to the issuance of the initial certificate; or hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) as a career guidance specialist with an authorized employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of ~~((fifteen))~~ ten quarter hours of college credit ~~((or))~~, the equivalent of one hundred ~~((fifty))~~ clock hours, or four professional growth plans prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. ~~((Provided,))~~ At least four quarter credits or thirty clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional

growth plan requirement within the five years prior to the date of the renewal application.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board shall be eligible for the probationary certificate and must meet the requirements for earning the initial certificate.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing career guidance specialist certificate by the expiration date of the original certificate held, and will be considered to have met the requirements to obtain a continuing career guidance specialist certificate in subsection (4) of this section.

(c) Upon issuance of the probationary initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

**AMENDATORY SECTION** (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-77-120 Out-of-state candidates.** Out-of-state applicants shall be eligible for Washington career and technical education certificates if they meet the standards in chapter 181-77 WAC or as follows: ~~((Provided, That))~~ Candidates who apply for a career and technical education certificate who have not successfully completed course work or an in-service program including a minimum of ten clock hours of instruction on issues of abuse, must complete such course work or in-service program as a condition of the issuance of a career and technical education certificate. The content of the course work or in-service program ((shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention)) is as described in WAC 181-79A-030.

(1) Initial certificate. The initial certificate shall be issued by the superintendent of public instruction to a candidate who has two thousand hours of paid occupational experience and who meets one of the following:

(a) Qualifies under provisions of the interstate compact;

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state-approved preparation program at ~~((# regionally))~~ an accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4)(-);

(c) Holds an appropriate career and technical education certificate issued by another state and had practiced at the P-12 level in that respective role outside the state of Washing-

ton for three years and has completed competency-based teacher training.

(2) Continuing certificate. The continuing certificate shall be issued on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

**WSR 18-17-066**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed August 9, 2018, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-048.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-101-3170 Group training home, in order to strike the requirement for a group training home to be licensed as an adult family home. RCW 70.128.030(3) specifically exempts facilities approved and certified under chapter 71A.22 RCW, Training centers and homes, from the operation of chapter 70.128 RCW, Adult family homes.

Hearing Location(s): On September 25, 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 September 26, 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., September 25, 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 September 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is striking the requirement for a group training home to be licensed as an adult family home in WAC 388-101-3170.

Reasons Supporting Proposal: To meet the statutory requirements of RCW 70.128.030(3) that exempt facilities approved and certified under chapter 71A.22 RCW, Training centers and homes, from the operation of chapter 70.128 RCW, Adult family homes.

Statutory Authority for Adoption: RCW 70.128.030, chapter 71A.12 RCW.

Statute Being Implemented: RCW 70.128.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Claudia Baetge, P.O. Box 45600, Olympia, WA 98504, 360-

725-2589; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98504, 360-725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98504, 360-725-2404.

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 department has analyzed the proposed rules and determined that they have no fiscal impact.

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; 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 19.85.030.

Explanation of exemptions: The department has analyzed the proposed rule and concluded that no new costs will be imposed on small business affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

August 8, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3170 Group training home.** After the effective date of this chapter a person or entity desiring to become a group training home must:

(1) Complete an application on forms and attachments designated by the department; and

(2) Currently be:

(a) Certified as a community residential services and support provider; and

(b) ~~((Licensed as an adult family home under chapter 70.128 RCW; and~~

(e))) A nonprofit business in accordance with state and federal law.

**WSR 18-17-070**  
**WITHDRAWL OF PROPOSED RULES**  
**BIG BEND**  
**COMMUNITY COLLEGE**  
[Filed August 10, 2018, 9:52 a.m.]

Please withdraw the CR-102 filed on July 18, 2018, as WSR 18-15-094, regarding WAC 132R-136-080 Posting of materials. The public hearing on August 22, 2018, is cancelled.

**WSR 18-17-083**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed August 14, 2018, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-099.

Title of Rule and Other Identifying Information: WAC 16-501-525 Unsigned ballot envelopes: Advisory votes, referenda, and board member elections.

Hearing Location(s): On October 9, 2018, at 10:30 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Room 205, Olympia, WA 98504.

Date of Intended Adoption: October 16, 2018.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., October 9, 2018.

Assistance for Persons with Disabilities: Contact Teresa Norman, phone 360-902-2043, fax 360-902-2092, TTY 800-833-6388, email tnorman@agr.wa.gov, by October 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The director of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes and board member selection authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060. These rules set procedures for administrative functions for commodity commissions. Including statutory citations for those commissions established under statutes other than chapters 15.65 and 15.66 RCW clarify the director's responsibilities. Revising procedures for unsigned ballots will streamline and expedite the referendum and voting process.

Reasons Supporting Proposal: Washington state department of agriculture (WSDA) has oversight of the state's commodity commissions. As part of the oversight role, the director appoints many members of the commodity commissions. The proposed amendments include those commissions authorized under chapters other than chapters 15.65 and 15.66 RCW, thereby clarifying the department's oversight role. Further, affected producers vote on referenda, advisory votes, and elections. An integral part of voting is certifying one's eligibility to vote. If a ballot-mailing envelope is returned without a certification, the department has [been] setting the envelope aside and offering the voter a "second chance" to certify his or her eligibility to vote. If the voter does not return the certification within the allowed time frame, the ballot is not counted. This process adds a minimum of twenty days to the process; increases mailing costs to the department, the commission, and the voter; and makes the process cumbersome to administer. An analysis of recent commodity commission referenda, advisory ballots, and elections show less than one percent of those receiving second chances sign and return the certification that allows their ballots to be counted. The proposed amendments remove the "second chance" and affirms that ballot-mailing envelopes received without a signature will be set aside and not counted.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113,

15.88.050, 15.89.050, 15.115.060, 16.67.060, and chapter 34.05 RCW.

Statute Being Implemented: Chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.88, 15.89, 15.115, and 16.67 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Teresa Norman, 1111 Washington Street S.E., Olympia, 360-902-2043; Implementation and Enforcement: Henri Gonzalez, 1111 Washington Street S.E., Olympia, 360-902-1809.

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. WSDA is not a listed agency under 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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 13, 2018

Patrick Capper

Deputy Director

**Procedural Rules for Administrative Function for Commodity Commissions Advisory Votes, Elections, and Referenda**

AMENDATORY SECTION (Amending WSR 05-08-078, filed 4/1/05, effective 5/2/05)

**WAC 16-501-525 Unsigned ballot envelopes: Advisory votes, referenda, and board member elections.** The director of the department of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes(~~(, marketing order referenda)~~) and board member selection as ((required in chapters 15.65 and 15.66 RCW)) authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

(1) The department will mail ballots to those eligible to vote in each election according to the terms of the applicable statute and marketing order. Each voter will be provided an official ballot, instructions for voting, a security envelope and return ballot-mailing envelope with a "Certificate of Eligibility" (certification) printed on the reverse side of the envelope.

(2) After casting ~~((its))~~ a vote in the election, an eligible voter must place the ballot in the security envelope(~~(The security envelope is then to be)), which is then~~ placed in the ballot-mailing return envelope with the certification on the reverse side. To validate ~~((its))~~ his or her ballot, the voter is required to complete, sign and date the certification.

**WSR 18-17-085**  
**PROPOSED RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed August 14, 2018, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-076.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services.

Hearing Location(s): On September 25, 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 September 26, 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., September 25, 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 September 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-105-0005 to update the rates in the tables to reflect new rates that are being paid effective July 1, 2018, currently in place by emergency filed as WSR 18-14-060.

Reasons Supporting Proposal: The changes to rates are directed by legislation.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Statute Being Implemented: SB 6032 (chapter 299, Laws of 2018).

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: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503, 360-725-2447.

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 adjusting rates pursuant to legislative standards (RCW 34.05.328 (5)(b)(vi)).

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 set or adjust fees under the authority of RCW 19.02.075 or

(3) In the event a ballot is submitted to the department and the certification is not signed and dated in accordance with the instructions contained on the outside of the ballot-mailing return envelope or the ballot is returned in a different envelope without a certification, the ~~((department shall process the ballot and the ballot-mailing return envelope as follows, if the department is able to ascertain the identity of the eligible voter from the envelope:~~

~~(a) The department will not open the ballot mailing return envelope, but will make a copy of the reverse side of the ballot mailing return envelope with the printed certification. The original ballot mailing return envelope will be held by the department.~~

~~(b) The department will provide the eligible voter with a copy of the ballot mailing return envelope with the certification and require the voter to sign the copy of the certification and mail it back to the department so that it is received not later than the date specified in the correspondence accompanying the certification.~~

~~(c) The department shall advise the voter about the correct procedures for completing the unsigned certification and that, in order for the ballot to be counted, the voter must sign and date the copy of the certification, and mail it back to the department so that it does not arrive later than the specified date.~~

~~(d) The signed certification must be received by the department within fourteen calendar days from the date the copy of the certification was mailed to the voter as evidenced by the United States mail date stamp, for the voter's ballot to be validated.~~

~~(e) If the department does not receive the signed certification with the requested information within the specified time frame, the original)) ballot-mailing envelope will not be opened nor will the ballot it contains be counted. The unopened ballot-mailing envelope will be set aside and retained in accordance with the appropriate records retention schedule.~~

~~(4) ((A record shall be kept of the date on which the department mailed the copy of the certification to the eligible voter, the date on which the voter signed the certification and the date that the department received the certification. That record will be retained in accordance with applicable records retention schedules for ballots.~~

~~(5)) Only validated ballots will be included in a ballot count.~~

~~((6)) (5) This rule applies to referenda, advisory votes, elections, and runoffs required by statute ((that are conducted after the effective date of this rule. However, subsections (3) and (4) do not apply in an election once any election ballots have been counted or in a runoff election once any runoff election ballots have been counted.~~

~~(7) This rule does not apply if the recount period specified in the applicable statute has expired)).~~

that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 8, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-097, filed 1/17/18, effective 2/17/18)

**WAC 388-105-0005** The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services. For contracted adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |                               |                               |                                 |                               |                               |
|---|-------------------------------|-------------------------------|---------------------------------|-------------------------------|-------------------------------|
| KING COUNTY   |                               |                               |                                 |                               |                               |
| CARE CLASSIFICATION   | AL Without Capital Add-on     | AL With Capital Add-on        | ARC/EARC Without Capital Add-On | ARC/EARC With Capital Add-On  | AFH                           |
| A Low   | \$((70.59))<br><u>73.34</u>   | \$((76.01))<br><u>81.18</u>   | \$((50.06))<br><u>52.02</u>     | \$((50.06))<br><u>54.44</u>   | \$71.96                       |
| A Med   | \$((76.38))<br><u>79.35</u>   | \$((81.80))<br><u>87.19</u>   | \$((56.74))<br><u>58.95</u>     | \$((56.74))<br><u>61.37</u>   | \$74.74                       |
| A High  | \$((85.66))<br><u>88.99</u>   | \$((91.08))<br><u>96.83</u>   | \$((62.27))<br><u>64.70</u>     | \$((62.27))<br><u>67.12</u>   | \$81.23                       |
| B Low   | \$((70.59))<br><u>73.34</u>   | \$((76.01))<br><u>81.18</u>   | \$((50.06))<br><u>52.02</u>     | \$((50.06))<br><u>54.44</u>   | \$73.40                       |
| B Med   | \$((78.72))<br><u>81.78</u>   | \$((84.14))<br><u>89.62</u>   | \$((63.42))<br><u>65.89</u>     | \$((63.42))<br><u>68.31</u>   | \$79.78                       |
| B Med-High  | \$((89.08))<br><u>92.54</u>   | \$((94.50))<br><u>100.38</u>  | \$((67.41))<br><u>70.04</u>     | \$((67.41))<br><u>72.46</u>   | \$86.56                       |
| B High  | \$((93.75))<br><u>97.39</u>   | \$((99.17))<br><u>105.23</u>  | \$((76.98))<br><u>79.97</u>     | \$((76.98))<br><u>82.39</u>   | \$89.05                       |
| C Low   | \$((76.38))<br><u>79.35</u>   | \$((81.80))<br><u>87.19</u>   | \$((56.74))<br><u>58.95</u>     | \$((56.74))<br><u>61.37</u>   | \$81.03                       |
| C Med   | \$((85.66))<br><u>88.99</u>   | \$((91.08))<br><u>96.83</u>   | \$((71.09))<br><u>73.83</u>     | \$((71.09))<br><u>76.28</u>   | \$93.33                       |
| C Med-High  | \$((106.51))<br><u>110.64</u> | \$((111.93))<br><u>118.48</u> | \$((94.60))<br><u>98.27</u>     | \$((94.60))<br><u>100.69</u>  | \$98.41                       |
| C High  | \$((107.57))<br><u>111.74</u> | \$((112.99))<br><u>119.58</u> | \$((95.51))<br><u>99.22</u>     | \$((95.51))<br><u>101.64</u>  | \$99.76                       |
| D Low   | \$((78.72))<br><u>81.78</u>   | \$((84.14))<br><u>89.62</u>   | \$((76.52))<br><u>79.50</u>     | \$((76.52))<br><u>81.92</u>   | \$86.46                       |
| D Med   | \$((87.40))<br><u>90.79</u>   | \$((92.82))<br><u>98.63</u>   | \$((88.58))<br><u>92.02</u>     | \$((88.58))<br><u>94.44</u>   | \$95.25                       |
| D Med-High  | \$((112.88))<br><u>117.26</u> | \$((118.30))<br><u>125.10</u> | \$((112.50))<br><u>116.86</u>   | \$((112.50))<br><u>119.28</u> | \$((112.59))<br><u>114.84</u> |
| D High  | \$((121.59))<br><u>126.30</u> | \$((127.01))<br><u>134.14</u> | \$((121.59))<br><u>126.30</u>   | \$((121.59))<br><u>128.72</u> | \$((128.01))<br><u>130.57</u> |

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE  
KING COUNTY

| CARE CLASSIFICATION | AL Without Capital            | AL With Capital               | ARC/EARC                      | ARC/EARC                      | AFH                           |
|---------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
|                     | Add-on                        | Add-on                        | Without Capital Add-On        | With Capital Add-On           |                               |
| E Med               | \$((146.85))<br><u>152.53</u> | \$((152.27))<br><u>160.37</u> | \$((146.85))<br><u>152.53</u> | \$((146.85))<br><u>154.95</u> | \$((154.39))<br><u>157.48</u> |
| E High              | \$((172.10))<br><u>178.76</u> | \$((177.52))<br><u>186.60</u> | \$((172.10))<br><u>178.76</u> | \$((172.10))<br><u>181.18</u> | \$((180.80))<br><u>184.42</u> |

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE  
METROPOLITAN COUNTIES\*

| CARE CLASSIFICATION | AL Without Capital            | AL With Capital               | ARC/EARC                      | ARC/EARC                      | AFH                           |
|---------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
|                     | Add-on                        | Add-on                        | Without Capital Add-On        | With Capital Add-On           |                               |
| A Low               | \$((64.78))<br><u>67.30</u>   | \$((69.70))<br><u>74.64</u>   | \$((50.06))<br><u>52.02</u>   | \$((50.06))<br><u>54.44</u>   | \$70.78                       |
| A Med               | \$((68.28))<br><u>70.94</u>   | \$((73.20))<br><u>78.28</u>   | \$((54.51))<br><u>56.64</u>   | \$((54.51))<br><u>59.06</u>   | \$73.49                       |
| A High              | \$((83.35))<br><u>86.59</u>   | \$((88.27))<br><u>93.93</u>   | \$((59.39))<br><u>61.71</u>   | \$((59.39))<br><u>64.13</u>   | \$79.80                       |
| B Low               | \$((64.78))<br><u>67.30</u>   | \$((69.70))<br><u>74.64</u>   | \$((50.06))<br><u>52.02</u>   | \$((50.06))<br><u>54.44</u>   | \$72.18                       |
| B Med               | \$((74.05))<br><u>76.93</u>   | \$((78.97))<br><u>84.27</u>   | \$((60.09))<br><u>62.43</u>   | \$((60.09))<br><u>64.85</u>   | \$78.39                       |
| B Med-High          | \$((83.83))<br><u>87.09</u>   | \$((88.78))<br><u>94.43</u>   | \$((63.86))<br><u>66.35</u>   | \$((63.86))<br><u>68.77</u>   | \$84.98                       |
| B High              | \$((91.43))<br><u>94.98</u>   | \$((96.35))<br><u>102.32</u>  | \$((74.82))<br><u>77.73</u>   | \$((74.82))<br><u>80.15</u>   | \$87.41                       |
| C Low               | \$((68.28))<br><u>70.94</u>   | \$((73.20))<br><u>78.28</u>   | \$((54.73))<br><u>56.87</u>   | \$((54.73))<br><u>59.29</u>   | \$79.61                       |
| C Med               | \$((83.35))<br><u>86.59</u>   | \$((88.27))<br><u>93.93</u>   | \$((70.19))<br><u>72.92</u>   | \$((70.19))<br><u>75.31</u>   | \$91.57                       |
| C Med-High          | \$((103.01))<br><u>107.01</u> | \$((107.93))<br><u>114.35</u> | \$((87.92))<br><u>91.33</u>   | \$((87.92))<br><u>93.75</u>   | \$93.63                       |
| C High              | \$((105.05))<br><u>108.09</u> | \$((108.97))<br><u>115.43</u> | \$((93.50))<br><u>97.13</u>   | \$((93.50))<br><u>99.55</u>   | \$97.03                       |
| D Low               | \$((74.05))<br><u>76.93</u>   | \$((78.97))<br><u>84.27</u>   | \$((75.47))<br><u>78.41</u>   | \$((75.47))<br><u>80.83</u>   | \$84.89                       |
| D Med               | \$((85.04))<br><u>88.34</u>   | \$((89.96))<br><u>95.68</u>   | \$((86.81))<br><u>90.18</u>   | \$((86.81))<br><u>92.60</u>   | \$93.44                       |
| D Med-High          | \$((109.19))<br><u>113.42</u> | \$((114.11))<br><u>120.76</u> | \$((109.74))<br><u>113.99</u> | \$((109.74))<br><u>116.41</u> | \$((109.19))<br><u>111.37</u> |
| D High              | \$((118.27))<br><u>122.85</u> | \$((123.19))<br><u>130.19</u> | \$((118.27))<br><u>122.85</u> | \$((118.27))<br><u>125.27</u> | \$((123.88))<br><u>126.36</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>METROPOLITAN COUNTIES* |                               |                               |                                    |                                    |                               |
|---|-------------------------------|-------------------------------|------------------------------------|------------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL Without Capital<br>Add-on  | AL With Capital<br>Add-on     | ARC/EARC<br>Without Capital Add-On | ARC/EARC<br>With Capital<br>Add-On | AFH                           |
| E Med   | \$((142.31))<br><u>147.82</u> | \$((147.23))<br><u>155.16</u> | \$((142.31))<br><u>147.82</u>      | \$((142.31))<br><u>150.24</u>      | \$((149.01))<br><u>151.99</u> |
| E High  | \$((166.34))<br><u>172.77</u> | \$((171.23))<br><u>180.11</u> | \$((166.34))<br><u>172.77</u>      | \$((166.34))<br><u>175.19</u>      | \$((174.13))<br><u>177.61</u> |

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |                               |                               |                                    |                                    |                               |
|---|-------------------------------|-------------------------------|------------------------------------|------------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL Without Capital<br>Add-on  | AL With Capital<br>Add-on     | ARC/EARC<br>Without Capital Add-On | ARC/EARC<br>With Capital<br>Add-On | AFH                           |
| A Low   | \$((63.65))<br><u>66.13</u>   | \$((68.89))<br><u>73.79</u>   | \$((50.06))<br><u>52.02</u>        | \$((50.06))<br><u>54.44</u>        | \$69.07                       |
| A Med   | \$((68.28))<br><u>70.94</u>   | \$((73.52))<br><u>78.60</u>   | \$((53.41))<br><u>55.50</u>        | \$((53.41))<br><u>57.92</u>        | \$71.67                       |
| A High  | \$((83.38))<br><u>86.59</u>   | \$((88.59))<br><u>94.25</u>   | \$((58.45))<br><u>60.73</u>        | \$((58.45))<br><u>63.15</u>        | \$77.73                       |
| B Low   | \$((63.65))<br><u>66.13</u>   | \$((68.89))<br><u>73.79</u>   | \$((50.06))<br><u>52.02</u>        | \$((50.06))<br><u>54.44</u>        | \$70.42                       |
| B Med   | \$((74.05))<br><u>76.93</u>   | \$((79.29))<br><u>84.59</u>   | \$((58.97))<br><u>61.27</u>        | \$((58.97))<br><u>63.69</u>        | \$76.38                       |
| B Med-High  | \$((83.83))<br><u>87.09</u>   | \$((89.07))<br><u>94.25</u>   | \$((62.67))<br><u>65.11</u>        | \$((62.67))<br><u>67.53</u>        | \$82.71                       |
| B High  | \$((91.43))<br><u>94.98</u>   | \$((96.67))<br><u>102.64</u>  | \$((70.79))<br><u>73.55</u>        | \$((70.79))<br><u>75.97</u>        | \$85.04                       |
| C Low   | \$((68.28))<br><u>70.94</u>   | \$((73.52))<br><u>78.60</u>   | \$((53.41))<br><u>55.50</u>        | \$((53.41))<br><u>57.92</u>        | \$77.55                       |
| C Med   | \$((83.35))<br><u>86.59</u>   | \$((88.59))<br><u>94.25</u>   | \$((66.67))<br><u>68.96</u>        | \$((66.37))<br><u>71.38</u>        | \$89.04                       |
| C Med-High  | \$((103.01))<br><u>107.01</u> | \$((108.25))<br><u>114.67</u> | \$((84.58))<br><u>87.87</u>        | \$((84.58))<br><u>90.29</u>        | \$91.01                       |
| C High  | \$((104.05))<br><u>108.09</u> | \$((109.29))<br><u>115.75</u> | \$((88.40))<br><u>91.83</u>        | \$((88.40))<br><u>94.25</u>        | \$93.08                       |
| D Low   | \$((74.05))<br><u>76.93</u>   | \$((79.29))<br><u>84.59</u>   | \$((71.36))<br><u>74.14</u>        | \$((71.36))<br><u>76.56</u>        | \$82.62                       |
| D Med   | \$((85.04))<br><u>88.34</u>   | \$((90.28))<br><u>96.00</u>   | \$((82.09))<br><u>85.28</u>        | \$((82.09))<br><u>87.70</u>        | \$90.83                       |
| D Med-High  | \$((109.19))<br><u>113.42</u> | \$((114.43))<br><u>121.08</u> | \$((103.74))<br><u>107.76</u>      | \$((103.74))<br><u>110.18</u>      | \$((104.36))<br><u>103.46</u> |
| D High  | \$((111.81))<br><u>116.14</u> | \$((117.05))<br><u>123.80</u> | \$((111.81))<br><u>116.14</u>      | \$((111.81))<br><u>118.56</u>      | \$((117.20))<br><u>119.54</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |                               |                               |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL Without Capital            | AL With Capital               | ARC/EARC                      | ARC/EARC                      | AFH                           |
|   | Add-on                        | Add-on                        | Without Capi-<br>tal Add-On   | With Capital<br>Add-On        |                               |
| E Med   | \$((134.53))<br><u>139.74</u> | \$((139.77))<br><u>147.40</u> | \$((134.53))<br><u>139.74</u> | \$((134.53))<br><u>142.16</u> | \$((140.94))<br><u>143.76</u> |
| E High  | \$((157.25))<br><u>163.33</u> | \$((162.49))<br><u>170.99</u> | \$((157.25))<br><u>163.33</u> | \$((157.25))<br><u>165.75</u> | \$((164.70))<br><u>167.99</u> |

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 18-17-091**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 14, 2018, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-010.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-140, 181-79A-231, 181-79A-232, 181-79A-270, to clarify and reduce confusion about the use of limited certificates for educators. Reduces the number of types of limited certificates. Removes long-term substitute from those defined as limited.

Hearing Location(s): On September 26, 2918 [2018], at 8:30, at the DoubleTree, 322 North Spokane Falls Court, Spokane, WA 99201.

Date of Intended Adoption: September 26, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by September 19, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by September 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies and organizes limited certificate regulations.

Reasons Supporting Proposal: Streamlines requirements and honors national standards.

Statutory Authority for Adoption: RCW 28A.410.220.

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

Name of Proponent: Professional educator standards board.

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.

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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.

August 14, 2018  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-025, filed 12/28/11, effective 1/28/12)

**WAC 181-79A-140 Types of certificates.** Six types of certificates shall be issued:

(1) Teacher. The teacher certificate (~~(, including teacher exchange permits as provided in WAC 181-79A-270,)~~) authorizes service as a classroom teacher.

(2) Career and technical education. The career and technical education certificate authorizes service in career and technical education programs in accordance with ~~((the provisions of))~~ chapter 181-77 WAC.

(3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service ~~((as defined under))~~ in accordance with WAC 181-78A-700((8)).

(4) Administrator.

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: ~~((Provided, That))~~ Nothing within chapter 181-79A

WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations (~~(promulgated)~~) adopted by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals (~~(under specific circumstances set forth)~~) in accordance with WAC 181-79A-231:

- (a) Conditional certificate.
- (b) (~~(Substitute certificate.~~
- (c) Emergency certificate.
- (~~(d)~~) Emergency substitute certificate.
- (~~(e)~~) Nonimmigrant alien exchange teacher.
- (~~(f)~~) ((c)) Intern substitute teacher certificate.
- (~~(g)~~) ((d)) Transitional certificate.
- (~~(h)~~) Provisional alternative administrative certificate.)

(7) Substitute certificate. The substitute certificate is issued to individuals in accordance with WAC 181-79A-232.

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

**WAC 181-79A-231 Limited certificates.** (~~(Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:~~

(1) Conditional certificate:

(a) ~~The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.~~

(b) ~~Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:~~

(i) ~~The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or~~

(ii) ~~No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.~~

(c) ~~In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:~~

(i) ~~The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or~~

(ii) ~~The applicant is assigned instructional responsibility for intramural/inter-scholastic activities which are part of the district or approved private school approved program; or~~

(iii) ~~The applicant possesses a state of Washington license for a registered nurse. Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (c)(iii) of this subsection; or~~

(iv) ~~The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech language pathologists or audiologist certificate.~~

(v) ~~The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.~~

(vi) ~~The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.~~

(vii) ~~An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.~~

(d) ~~The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:~~

(i) ~~The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;~~

(ii) ~~The individual is being certificated for a specific assignment and responsibility in a specified activity/field;~~

(e) ~~When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:~~

(i) ~~After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.~~

(ii) ~~The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or~~

approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for the roles of principal, teacher, school counselor, school psychologist, school speech language pathologist or audiologist and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold a bachelor's degree and are enrolled in a state approved preparation program for the role, if it is a role for which state approved programs are required, in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in a state approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship: Provided further, That a candidate for emergency certification as a school speech language pathologist or audiologist shall be enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification, and may be renewed one time if the candidate has substantially completed the required master's degree program.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible

to serve as a teacher in the elementary or secondary schools of the country of residence.

~~(6) Intern substitute teacher certificate.~~

~~(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.~~

~~(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.~~

~~(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.~~

~~(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.~~

~~(7) Transitional certificate.~~

~~(a) An individual whose continuing certificate has expired according to WAC 181-85-040 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete requirements for continuing certificate reinstatement within two years of the date the holder was issued the transitional certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.~~

~~(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.~~

~~(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.~~

~~(d) The transitional certificate is not renewable and may not be reissued.)~~ All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

**(1) Conditional certificate.**

(a) Intent. The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

**(b) Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

(A) Special education teachers;

(B) Nonimmigrant exchange teachers;

(C) Traffic safety education teachers.

(ii) Education staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

(A) School counselor;

(B) School nurse;

(C) School psychologist;

(D) School social worker;

(E) School speech language pathologist or audiologist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

**(c) Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within twenty working days from the commencement of the assignment; and

(H) A written plan of support will be developed within twenty working days from the commencement of the assignment.

**(d) Minimum requirements.**

(i) Individuals must complete fifty continuing education credit hours subsequent to the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete fifty continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program pursuant to WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) Validity. The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

**(f) Reissuance.**

(i) The conditional certificate may be reissued upon application by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the fifty continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a residency teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

**(2) Transitional certificate.**

(a) Intent. The transitional certificate provides flexibility for school districts in employing an individual whose continuing certificate has lapsed or expired.

(b) Roles. The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates.

**(c) Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to WAC 181-85-040.

(ii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary continuing certificate renewal requirements under WAC 181-85-130.

**(d) Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for continuing certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(e) Validity. The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) Reissuance. The transitional certificate is not renewable and may not be reissued.

**(3) Emergency substitute certificate.**

(a) Intent. The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

**(b) Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156(b)(2)(ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

**(c) Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) Validity. Emergency substitute certificates shall be valid for two years or less.

(e) Reissuance. The emergency substitute certificate may be reissued upon application by the employing local

school district, approved private school, or educational service district.

**(4) Intern substitute certificate.**

(a) Intent. The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) Roles. The intern substitute certificate may be issued to student teachers or intern teachers.

**(c) Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) Minimum requirements. The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) Validity. The intern substitute teacher certificate is valid for one year or less.

(f) Reissuance. The intern substitute certificate may be reissued upon application by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

**NEW SECTION****WAC 181-79A-232 Substitute certificate. (1) Substitute certificate.**

(a) Intent. The intent of the substitute certificate is to provide a district, educational service district, or approved private school with hiring flexibility during the absence of an educator.

**(b) Roles.**

(i) This certificate may be issued in the role of teacher, educational staff associate, or administrator.

(ii) Educational staff associates may only substitute in the specific role of their certificate.

(iii) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment.

(iv) If a district, educational service district, or approved private school employs a teacher holding a substitute certificate in any one assignment for more than thirty working days, then the district, educational service district, or approved private school must within twenty working days develop a plan of professional learning for the individual that is appropriate to the assignment, designed to support their professional growth, and enhance instructional knowledge and skills to meet district needs and assist students in meeting the state learning goals.

(c) **Minimum requirements.** The substitute certificate may be issued to:

(i) Teachers, educational staff associates, or administrators who hold or have held a regular state of Washington educator certificate; or

(ii) Persons who have completed state approved educator preparation programs for their role, if it is a role for which state-approved programs are required, and a bachelor's degree or higher at an accredited college or university as required for the initial or residency certificate for their role in chapter 181-79A WAC; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257; or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(d) **Request requirements.** The individual educator applies for the substitute certificate.

(e) **Validity.** The substitute certificate is valid for life.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-79A-270 Teacher, principal, and educational staff associate exchange permits.

#### **WSR 18-17-103**

##### **PROPOSED RULES**

##### **DEPARTMENT OF ECOLOGY**

[Order 16-07—Filed August 15, 2018, 2:18 p.m.]

Continuance of WSR 18-15-073.

Preproposal statement of inquiry was filed as WSR 17-17-077.

Title of Rule and Other Identifying Information: On July 17, 2018, the department of ecology proposed to amend chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. This rule making will set forth revised fresh and marine water quality standards for the protection of water contact recreational use in state waters.

We are filing this form to clarify the addresses for submitting written comments on the above rule making. You may submit comments through September 14, 2018. See below to learn how to submit comments.

Please see the original CR-102 filing for this rule making [https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-\(WAC-173-201A\)-07-17-18](https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-(WAC-173-201A)-07-17-18).

For more details about this rule making and public comment period, please visit our web page <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-201A-Aug17>.

Hearing Location(s): The original CR-102, filed on July 17, 2018, announced the hearings for this rule making. Please see the original filing for more details [https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-\(WAC-173-201A\)-07-17-18](https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-(WAC-173-201A)-07-17-18).

Date of Intended Adoption: November 28, 2018.

Submit Written Comments to: Becca Conklin, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600 (U.S. mail), 300 Desmond Drive S.E., Lacey, WA 98503 (parcel delivery), submit comments by mail, online, or at the hearing(s), online <http://ws.ecology.commentinput.com/?id=sx2WK>, by September 14, 2018. We are filing this form to clarify the addresses for submitting written comments. Please see the original CR-102 filing for more details about this rule making [https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-\(WAC-173-201A\)-07-17-18](https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/WQ/WAC-173-201A/CR-102-Form-(WAC-173-201A)-07-17-18).

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, people with speech disability call TTY 877-833-6341. People with impaired hearing call Washington relay service 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call ecology 360-407-7668 or visit <https://ecology.wa.gov/accessibility>, email [hanna.waterstrat@ecy.wa.gov](mailto:hanna.waterstrat@ecy.wa.gov), by August 23, 2018.

August 15, 2018

Polly Zehm

Deputy Director

#### **WSR 18-17-107**

##### **PROPOSED RULES**

##### **WASHINGTON STATE HISTORICAL SOCIETY**

[Filed August 16, 2018, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-034.

Title of Rule and Other Identifying Information: Creating rules for acceptance of gifts, grants, conveyances, bequests, and devices of real or personal property and to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devices.

Hearing Location(s): On October 3, 2018, at 1:00 p.m., at the Washington State History Museum, 1911 Pacific Avenue, Board Room, Tacoma.

Date of Intended Adoption: November 6, 2018.

Submit Written Comments to: Jennifer Kilmer, Director, 1911 Pacific Avenue, Tacoma, WA 98402, email [jennifer.kilmer@wshs.wa.gov](mailto:jennifer.kilmer@wshs.wa.gov), fax 253-272-9518, by September 18, 2018.

Assistance for Persons with Disabilities: Contact Misty Reese, phone 253-798-5901, fax 253-272-9518, email [misty.reese@wshs.wa.gov](mailto:misty.reese@wshs.wa.gov), by September 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 27.34.070 requires the adoption of rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devices received by the society. Anticipated effects are a clearer understanding of the rules for making and receiving gifts to the society.

Reasons Supporting Proposal: This rule making is required by RCW. It will provide clarity for donors and the society around the rules associated with gifts to the society.

Statutory Authority for Adoption: RCW 27.34.070.

Statute Being Implemented: RCW 27.34.070.

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

Name of Proponent: Washington state historical society, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Kilmer, 1911 Pacific Avenue, Tacoma, WA, 253-798-5900.

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 associated with this WAC.

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.

August 14, 2018  
Jennifer Kilmer  
Director

### Chapter 255-30 WAC

#### WASHINGTON STATE HISTORICAL SOCIETY— GIFTS, GRANTS, CONVEYANCES, BEQUESTS AND DEVICES

##### NEW SECTION

**WAC 255-30-010 Purpose.** Washington state historical society (society) has the power and authority to accept gifts, grants, conveyances, bequests, of real or personal property or both, whether or not these are held in trust or otherwise. It is also authorized to sell, lease, exchange, invest, or expend the same or the proceeds from rents, profits, and income except as limited by the donor's terms. The society is required by law to adopt rules to:

(1) Govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devices to the society;

(2) Ensure compliance with state and federal laws, rules and regulations, society policies, and professional standards of ethical and donor-centered fund-raising; and

(3) Provide protocols for individuals soliciting or accepting gifts on behalf of the society.

The purpose of these rules is to fulfill the society's legal responsibility to adopt these rules.

##### NEW SECTION

**WAC 255-30-020 Definitions.** (1) "Bequest" means property or money that an individual promises to give to another person or organization after he or she dies.

(2) "Bond" means an official document in which a government or company promises to pay back an amount of

money that it has borrowed and to pay interest for the borrowed money.

(3) "Conveyance" means the transfer or delivery of an item to another, commonly used to describe the transfer of title to land from one person to another by deed.

(4) "Device" means a testamentary disposition of land or realty, a gift of real property by the last will and testament of the donor.

(5) "Washington state historical society" means a 501 (c)(3) corporation and a trustee for the state of Washington pursuant to chapter 27.34 RCW. The society is responsible for collecting, cataloging and preserving objects, manuscripts, sites, photographs and other items that illustrate the cultural, artistic, and natural history of the state and in this capacity operates a state museum, which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070.

(6) "Grant" means to legally or formally transfer a possession.

(7) "Personal property" means something that is owned by a person, business or other entity such as goods, money, notes, bonds, stocks, merchandise, furniture, etc. It does not include land, an interest in land, buildings, or items affixed to the land.

(8) "Real property" means land, including all natural resources, and generally whatever is erected or growing upon or affixed to the land including buildings and crops.

(9) "Restricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor imposes conditions of ownership, retention, disposition or use of the item given.

(10) "Security" means an instrument of investment in the form of a document (such as a stock certificate or bond) providing evidence of its ownership.

(11) "Stock" means a share of the value of a company which can be bought, sold, or traded as an investment.

(12) "Trust" means property, real or personal, or money held by some person, firm or corporation for the benefit of the society.

(13) "Unrestricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor does not specify the imposition of any conditions as to the ownership or use of the gift.

##### NEW SECTION

**WAC 255-30-030 Procedures for accepting gifts.** (1) Donors: The society greatly values its donors and their support of the society. Society staff will treat donors with respect and professionalism. Donors will be acknowledged and thanked for their gifts in writing within a reasonable period of time, generally not to exceed one month.

(2) Donor intent: Society staff and representatives agree to respect and carry out the intentions of the donors whose gifts, grants, conveyances, bequests, or devices have been accepted by the society.

(3) Gift documentation: The society will document the receipt of all gifts.

#### NEW SECTION

##### **WAC 255-30-040 Income tax charitable deductions.**

Receipts shall be issued for gifts that qualify for income tax charitable deductions.

(1) Cash and checks: Cash and checks may be accepted regardless of the amount. The value of any cash or check gift is its face value. Checks should be written to the Washington State Historical Society or WSHS.

(2) Real or personal property: If the gift is personal or real property the society may document the value of the gift as it was formally appraised or accept the donor's stated value as a good faith estimate. For gifts valued at \$5000 or greater the donor must provide an independent professional appraisal.

(3) Life insurance: If the donor named the society as the beneficiary of a new or existing whole life insurance policy, the designation will be recorded as a gift, at its present value, when the gift becomes irrevocable. Alternatively, when the society is named as both beneficiary and irreversible owner of a whole life insurance policy, it will be recorded as a gift.

(4) Charitable remainder trusts, charitable lead trusts, and willed bequests: The income from a trust and/or a willed legacy will be recorded as a gift, at its present value, when a gift becomes irreversible.

(5) Retirement plan beneficiary designations: If a donor designates the society as a beneficiary of his or her retirement plan, it will be recorded as a gift, at its present value, when the gift becomes irreversible/permanent.

(6) Gifts in-kind: These include gifts of time and services. The society will record the donation of time and services, but will not identify a dollar value.

#### NEW SECTION

**WAC 255-30-050 Donations to the society.** (1) When the society receives a donation, it shall comply with all the rules and regulations related to gift giving for gifts it receives directly. Those rules are found in state, federal and corporate law related to:

(a) State entities and public 501 (c)(3) corporations;

(b) Federal and state laws and regulations that apply to the society as a 501 (c)(3) corporation including, but not limited to, the U.S. Internal Revenue Service Code; and

(c) Professional standards of ethical and donor-centered fund-raising.

(2) The society may hold endowed funds for the long term benefit of the society that are managed by a committee of the board or by an independent investment manager.

(3) Private funds donated directly to the society shall be held consistent with all state rules and regulations governing expenditure of those funds.

(4) Permanently restricted and temporarily restricted funds shall be kept in a separate line account as non-lapsing funds of the society together with earned interest and shall be used in accordance with the directions provided by the donor.

(5) Unrestricted funds shall be retained in the society's general cash account(s). Disbursement shall be made by the

executive director in accordance with the board of trustees-approved Society budget.

#### NEW SECTION

**WAC 255-30-070 Deferred gifts.** (1) The society welcomes and encourages deferred gifts such as:

(a) Charitable remainder trusts;

(b) Charitable lead trusts; and

(c) Testamentary bequests.

(2) Society trustees and staff members shall not serve as an executor (personal representative) for a donor's estate.

(3) Society trustees and staff members shall not serve as trustee or co-trustee on a charitable remainder trust or a charitable lead trust.

#### NEW SECTION

**WAC 255-30-080 Tangible personal property requirements.** (1) The following requirements apply to tangible personal property that is donated with the intent for the society to sell and do not apply to donations of artifacts for the collection:

(a) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purposes for which the item is being donated are permissible under the state expenditure rules which apply to donations to the society;

(c) All tangible property shall be valued by the proceeds from the sale or by a qualified appraisal;

(d) The society must be able to dispose of the property within a short time, normally not to exceed six months following the receipt of the gift; and

(e) The society shall adhere to all IRS requirements relating to the disposition of gifts of tangible personal property and shall provide appropriate forms to the donor and IRS where required.

(2) The following requirements apply to tangible personal property that is donated with the intent for the society to maintain:

(a) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(b) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;

(c) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION

**WAC 255-30-090 Acceptance of artwork.** In addition to the considerations outlined in WAC 256-30-080, prior to the acceptance of art, the society shall comply with the additional requirements of the society's *Collections Management Policy and Collecting Policy*.

[NEW SECTION]

**WAC 255-30-100 Acceptance of real estate.** (1) The society may accept gifts of developed or undeveloped real estate. The following requirements apply to the acceptance of real estate:

(a) Acceptance of real estate is contingent on formal approval of the society's board of trustees;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(c) The purpose for which the property is being donated shall be per-missible under the state expenditure rules which apply to donations to the society;

(d) The donor agrees that the property can be sold at the society's discretion;

(e) The donor may be responsible for obtaining and paying for an appraisal of the property. The appraisal must be performed by an independent, qualified appraiser;

(f) The society's board of trustees may require the donor provide an environmental appraisal of any proposed gift of real estate;

(g) The donor may be asked to pay for all or a portion of the following:

(i) Maintenance costs;

(ii) Real estate taxes due prior to date of conveyance;

(iii) Insurance;

(iv) Real estate broker's commission and other costs of sale; and

(v) Preliminary title report costs; and

(h) The property shall be conveyed by warranty deed prior to the execution of any contract of sale by the grantor.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

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

NEW SECTION

**WAC 255-30-120 Acknowledgment—Receipt for gifts.** On delivery of any contribution, the society will, to the best of its ability, provide a written acknowledgment of the receipt of a gift within 30 days.

**WSR 18-17-116****PROPOSED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed August 16, 2018, 5:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-037.

Title of Rule and Other Identifying Information:

Chapter 192-01 WAC, Employment security rule governance.

- WAC 192-01-001 Rule governance statement.

Chapter 192-500 WAC, Definitions.

- WAC 192-500-010 Employer.
- WAC 192-500-015 Employer agent.
- WAC 192-500-020 Calendar quarter.
- WAC 192-500-025 Terms meaning deliver.
- WAC 192-500-030 Willful.
- WAC 192-500-035 Interested parties.
- WAC 192-500-040 Aggrieved person.

Chapter 192-510 WAC, Assessing and collecting premiums.

- WAC 192-510-045 How will the department assess the size of employers for calendar years 2019 and 2020?
- WAC 192-510-065 When can an employer deduct premiums from employees?
- WAC 192-510-066 How are premium payments applied?

Chapter 192-530 WAC, Voluntary plans.

- WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments?
- WAC 192-530-060 What happens at the end of a voluntary plan?
- WAC 192-530-070 What is good cause for terminating an approved voluntary plan?

Chapter 192-540 WAC, Employer responsibilities.

- WAC 192-540-010 When must an employer send notice to employees who may need paid family and medical leave?
- WAC 192-540-020 What are the employer requirements for posting notice in a work place?
- WAC 192-540-025 Is notice required if an employer reduces the portion of employee premiums it is electing to pay?
- WAC 192-540-030 What are employers required to report to the department?
- WAC 192-540-040 How should employers report hours worked for each calendar quarter?
- WAC 192-540-050 When are employers required to submit quarterly reports to the department?

Chapter 192-550 WAC, Penalties and audits.

- WAC 192-550-010 What happens if an employer fails to submit required reports?
- WAC 192-550-020 What happens if an employer willfully fails to remit required payments?
- WAC 192-550-030 How will the department calculate interest on delinquent payments?
- WAC 192-550-040 Can employer interest be waived?
- WAC 192-550-050 Audit procedures.
- WAC 192-550-080 What happens if an employer fails to provide requested information to the department for an audit?

Chapter 192-560 WAC, Small business assistance.

- WAC 192-560-010 Which businesses are eligible for small business assistance grants?
- WAC 192-560-020 What is the application process for a small business assistance grant?
- WAC 192-560-030 What are significant additional wage-related costs for the purposes of small business assistance grants?

Chapter 192-570 WAC, Dispute resolution.

- WAC 192-570-010 Conference and conciliation.
- WAC 192-570-020 Complaints regarding unlawful acts.

Chapter 192-800 WAC, Practice and procedure.

- WAC 192-800-002 Untimely appeals.

Hearing Location(s): On October 24, 2018, at 9:00 a.m., at 640 Woodland Square Loop S.E., Lacey, WA 98503. Meeting will be held in the Park Place Conference Room; and on October 29, 2018, at 9:00 a.m., at DoubleTree by Hilton Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201. Meeting room will be posted on a sign in the lobby and listed on the hotel's daily event board. Event parking is \$8, metered street parking is also available.

Date of Intended Adoption: October 29, 2018.

Submit Written Comments to: Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.wa.gov), online portal [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home), by October 29, 2018.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, State EO Officer, phone 360-902-9354, TTY 711, email [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov), by October 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will further define paid family and medical leave (PFML) requirements for premium assessment, voluntary plans, employer responsibilities, penalties and audits, small business assistance grants, dispute resolution, and appeals. The proposal will also add a rule governance statement to clarify what chapters in Title 192 WAC apply to the PFML program.

Reasons Supporting Proposal: The rules will assist in meeting the requirements to implement the collection of premiums and accept voluntary plans from Washington employers by January 1, 2019, as mandated by Title 50A RCW, Family and medical leave. Additionally, the rules will provide guidance for employees and employers regarding operations and requirements for the new PFML program.

Statutory Authority for Adoption: RCW 50A.04.215.

Statute Being Implemented: RCW 50A.04.010, 50A.04.070, 50A.04.075, 50A.04.080, 50A.04.085, 50A.04.090, 50A.04.095, 50A.04.100, 50A.04.135, 50A.04.140, 50A.04.180, 50A.04.195, 50A.04.230, 50A.04.505, 50A.04.520, 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.615, 50A.04.620, 50A.04.650, 50A.04.625, 50A.04.630, 50A.04.635, 50A.04.650, 50A.04.655, 50A.04.660, and 50A.04.665.

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

Name of Proponent: Employment security department (ESD), PFML, governmental.

Name of Agency Personnel Responsible for Drafting: Christina Streuli, Lacey, Washington, 360-791-6710; Implementation and Enforcement: Matt Buelow, Lacey, Washington, 360-742-7311.

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 Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-791-6710, TTY Teresa Eckstein, State EO Officer, 360-902-9354, 711, [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov), email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.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 34.05.328 (5)(c)(ii) and (iii)(C).

Explanation of exemptions: RCW 34.05.328 (5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328 (5)(c)(iii)(C) outlines conditions which must be met for a rule to require analysis. Portions of the proposal do not meet these requirements.

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

#### Small Business Economic Impact Statement

Rules implementing Title 50A RCW, The family and medical leave program: WAC 192-540-020, 192-540-030, and 192-560-020.

**1. Provide a Brief Description of the Requirements of the Proposed Rules:** In 2017, the Washington state legislature passed SSB 5975 establishing the Paid Family and Medical Leave Act. SSB 5975 was codified as Title 50A RCW.

The PFML insurance program provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave. The statute requires ESD to develop rules implementing the program, which are being promulgated in multiple phases. This filing comprises rules developed in phase two, which primarily covers regulations related to employer responsibilities, penalties, and small business grants.

The rules in phase two provide guidance to employers and the community on several topics. At a high level, the rules contain guidance on:

- The responsibilities with which employers must comply such as providing notices to employees who may need the program and what must be reported to the department each quarter;
- The process for performing an audit and accessing certain penalties;
- The components of conference and conciliation and dispute resolution between employers and the department;
- The procedures for applying for small business assistance grants;
- Various definitions needed to clarify phrases used in the rules; and
- Other areas related to PFML.

Rules in this phase also offer additional clarity on the voluntary plan framework and on premium assessment. The

majority of rules on these topics were finalized in phase one of the PFML rule making.

**2. Costs to Businesses to Comply with the Proposed Rules:** The majority of phase two rules do not require a calculation of cost for compliance.<sup>1</sup> The following rules do require this analysis:

|  |                               |
|--|-------------------------------|
| <b>WAC 192-540-020 What are the employer requirements for posting notice in a work place?<sup>2</sup></b>  |                               |
| This rule requires employers to post a standard notice in a common work area that informs employees of certain employee rights under the PFML program. This rule implements RCW 50A.04.075 and provides additional guidance and clarity for employers. |                               |
| <b>Opportunity cost breakdown for small businesses</b>   |                               |
| Median hourly pay rate to complete the task  | \$20 per hour                 |
| Median hours required to complete the task   | 1 hour                        |
| <b>Opportunity cost for each small business</b>  | \$20.00, one-time cost        |
| <b>Estimated opportunity cost to all small businesses</b>  | \$6,265,960.00, one-time cost |

|  |                                  |
|--|----------------------------------|
| <b>WAC 192-540-030 What are employers required to report to the department?<sup>3</sup></b>  |                                  |
| This rule requires employers to submit quarterly reports to the department containing certain information related to employees. The rule implements RCW 50A.04.080. Instructions on when reports must be filed are contained in WAC 192-540-050, and 192-540-040 addresses how hours are to be included in the report. |                                  |
| <b>Opportunity cost breakdown for small businesses</b>   |                                  |
| Median hourly pay rate to complete the task  | \$29 per hour                    |
| Median hours required to complete the task   | 5 hours                          |
| Number of reports that must be submitted   | 4 annually, on a quarterly basis |
| <b>Opportunity cost for each small business</b>  | \$580.00, annually               |
| <b>Estimated opportunity cost to all small businesses</b>  | \$181,712,840.00, annually       |

|  |                                  |
|--|----------------------------------|
| <b>WAC 192-560-020 What is the application process for a small business assistance grant?<sup>4</sup></b>  |                                  |
| Small businesses are eligible to apply for assistance grants to help offset the cost of an employee taking PFML. The rule establishes application contents and various eligibility and exclusion criteria. The rule implements RCW 50A.04.230 and provides additional guidance for small businesses on how to submit grant applications. |                                  |
| <b>Opportunity cost breakdown for small businesses</b>   |                                  |
| Median hourly pay rate to complete the task  | \$25 per hour                    |
| Median hours required to complete the task   | 10 hours                         |
| <b>Opportunity cost for each small business<sup>5</sup></b>  | \$78,324,500, annually           |
| <b>Estimated opportunity cost to all small businesses</b>  | \$250, for every grant submitted |

<sup>1</sup> See chapter 5 of the significance analysis for a complete list of rules that do and do not require cost analysis in the small business economic impact study or the significance analysis.

<sup>2</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-540-020.

<sup>3</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-540-030.

<sup>4</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-560-020.

<sup>5</sup> Small businesses may be eligible to submit more than one grant application per year. Therefore, this estimate is the lowest threshold of economic

impact, assuming every small business submits one grant application per year.

**3. Impact on Sales or Revenue:** Any impact on sales or revenue is assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rule making pertaining to its implementation.

**4. Cost of Compliance for Small Businesses vs. Ten Percent of Largest Businesses:** Large businesses, defined as the top ten percent of businesses in the state by employment, will experience no economic impact due to the phase two PFML rules. The cost of administering the PFML rules will be spread across a large number of employees and is marginal - it is contained in the existing business cost structure.

*WAC 192-540-020 What are the employer requirements for posting notice in a work place?* This rule imposes a possible disproportionate impact on small business employers. The event of an employer posting a standard notice in a common work area does take an amount of employee time, paper (if the notice is not printed by the department), ink, and staples, glue, tacks, etc. Because the impact to large businesses is considered marginal and included in existing business cost structure, the impact to small businesses could be disproportional if such a business cost structure is not already in place.

*WAC 192-540-030 What are employers required to report to the department?* This rule imposes a possible disproportionate impact on small business employers. The report required by this rule is an accounting, human resources, and administrative management activity that occurs quarterly throughout the calendar year. Businesses will need to prepare, create, and submit reports that did not exist before the passage of the PFML act. Most businesses, large and small, will be required to submit this report. However, because the impact to large businesses is considered marginal and included in existing business cost structure, the impact to small businesses could be disproportional if such business cost structure is not already in place.

*WAC 192-560-020 What is the application process for a small business assistance grant?* This rule imposes economic cost on those businesses that apply for small business assistance grants. The rule establishes application content and various eligibility and exclusion criteria. Receiving an assistance grant reduces the cost of participating in the PFML program and therefore it is assumed that every small business in the state will submit at least one grant application per year. Only small businesses are eligible for these grants; large businesses do not qualify. Therefore, the rule disproportionately effects small businesses.

**5. Steps Taken to Reduce Costs on Small Businesses:** RCW 19.85.030(2) lists several options for agencies to consider when attempting to reduce the impact of proposed rules on small businesses. These options were considered by agency staff and ultimately deemed unfeasible based on the nature of the rules in question.

*WAC 192-540-020 What are the employer requirements for posting notice in a work place?* The requirement to post a notice for employees to view is a statutory requirement in RCW 50A.04.075. The statute and rule allow employers to use a notice provided by the department in lieu of creating one. If an employer chooses to create a notice, the rule provides guidance on what must be included. Because the post-

ing of a notice is a statutory requirement and because all employers can choose to use a notice developed by the department, no specific steps were taken to reduce costs.

*WAC 192-540-030 What are employers required to report to the department?* Statute requires employers to make and furnish reports and information to the department. RCW 50A.04.080. The rule provides additional guidance related to the frequency of those reports and must be included. The department considered all possible data fields employers could be required to provide and settled on those required by the rule because of the need to receive enough information to match the information provided by employers with the information provided by employees when such employees seek to open a claim for benefits. To properly determine if an employee is eligible for benefits the department must have enough information to determine hours worked, location of the work, and other elements. The department considered several other data elements but ultimately deemed them too onerous on employers. The data elements required by the rule are the minimum requirements needed to properly administer the program, ensure the integrity of the system, and limit fraudulent activity.

Similarly, the department cannot require fewer data elements from small businesses than it would from large businesses because of the need to properly match employer information with employee information when an application for benefits is made.

*WAC 192-560-020 What is the application process for a small business assistance grant?* Because WAC 192-540-030 is dependent on a small business employer opting into a nonrequired component of the law, no specific steps were taken to reduce costs. While it is estimated that the rule will impose a \$250 opportunity cost to employers, receiving an assistance grant reduces the overall cost of participation. If an application is approved, the employer will experience a financial gain.

**6. How Did the Agency Involve Small Businesses?** For the rules considered by this impact study, three surveys were used to gather data from small businesses. The survey sample frame contained 101,398 Washington state unemployment insurance covered small businesses that had an email address.

Three cohorts are used, one for each of the three rules that require an impact statement, each of equal size. The three files are uploaded to a "collector" in Survey Monkey and then sent out for response via the Survey Monkey system. The results from this survey created the data presented in the impact study.

Additionally, the department appointed an advisory committee consisting of advocates for both employer and employee interests, as required in RCW 50A.04.200. The team of advocates for employer interests represents several businesses in the state, including small businesses. These advocates were integral in the development of both the law and the rules governing it.

Lastly, through the standard rule-making process, several public meetings were held prior to filing the notice of proposed rules. Two informal "listening sessions" were held where any member of the public, including small business owners and stakeholders, could voice their opinions on what should be covered by rule in each phase. The department also

hosted two "stakeholder meetings" where representatives of the department presented drafts of rules and opened the floor for public comment. All stakeholders, including small business representatives, were also allowed to post comments in response to agency draft rules online through a civic engagement portal.

**7. List of Industries Affected:** Title 50A RCW generally applies to all employers in Washington state, apart from the federal government.

| 2-digit NAICS | Industry Sectors                             | Total Establishments | Total Employment |
|---------------|--|----------------------|------------------|
| <b>Total</b>  | <b>Total</b>                                 | <b>243,084</b>       | <b>3,225,703</b> |
| 11            | Agriculture, forestry, fishing and hunting   | 7,415                | 89,295           |
| 21            | Mining                                       | 172                  | 2,350            |
| 22            | Utilities                                    | 591                  | 18,747           |
| 23            | Construction                                 | 25,033               | 180,526          |
| 31, 32, 33    | Manufacturing                                | 7,698                | 293,807          |
| 42            | Wholesale trade                              | 14,199               | 130,050          |
| 44, 45        | Retail trade                                 | 20,550               | 368,567          |
| 48, 49        | Transportation and warehousing               | 5,633                | 124,044          |
| 51            | Information                                  | 4,441                | 128,611          |
| 52            | Finance and insurance                        | 8,885                | 93,768           |
| 53            | Real estate and rental and leasing           | 8,344                | 51,941           |
| 54            | Professional and technical services          | 25,655               | 199,303          |
| 55            | Management of companies and enterprises      | 716                  | 43,711           |
| 56            | Administrative and waste services            | 12,502               | 161,480          |
| 61            | Educational services                         | 3,843                | 283,651          |
| 62            | Health care and social assistance            | 55,341               | 460,623          |
| 71            | Arts, entertainment and recreation           | 3,104                | 70,512           |
| 72            | Accommodation and food services              | 17,094               | 267,382          |
| 81            | Other services, except public administration | 19,739               | 96,565           |
| 92            | Public administration                        | 2,129                | 160,770          |

*Source:* Employment security department.

**8. Number of Jobs Lost/Created:** Any jobs lost or created are assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rule making pertaining to its implementation.

A copy of the statement may be obtained by contacting Christina Streuli, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-791-6710, TTY Teresa Eckstein, State EO Officer, 360-902-9354, 711, TEckstein@esd.wa.gov, email cstreuli@esd.wa.gov.

August 16, 2018  
Susan G. LeVine  
Commissioner

**Chapter 192-01 WAC****EMPLOYMENT SECURITY RULE GOVERNANCE**NEW SECTION

**WAC 192-01-001 Rule governance statement.** The employment security department administers several distinct programs in Titles 50 and 50A RCW through the Washington Administrative Code. The provisions in chapters 192-04 through 192-499 WAC apply to the Employment Security Act in Title 50 RCW and other programs administered by the employment security department, except for the paid family and medical leave program. Chapter 192-500 WAC and thereafter (chapters 192-500 through 192-999 WAC) apply to the paid family and medical leave program in Title 50A RCW.

**Chapter 192-500 WAC****DEFINITIONS**NEW SECTION

**WAC 192-500-010 Employer.** (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and

(d) A franchisee.

(2) "Employer" does not include the United States of America.

(3) For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent.

(4) This section does not apply to any self-employed person or federally recognized tribe that has not elected coverage under Title 50A RCW.

NEW SECTION

**WAC 192-500-015 Employer agent.** (1) An "employer agent" is a designated representative that is authorized to conduct business on behalf of the employer.

(2) In order to represent an employer before the department, the employer or employer agent must submit a signed power of attorney form to the department.

(3) The employer is responsible for all acts taken or failures to act by the employer agent on the employer's behalf.

NEW SECTION

**WAC 192-500-020 Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months

ending on March 31st, June 30th, September 30th, or December 31st.

NEW SECTION

**WAC 192-500-025 Terms meaning deliver.** (1) Unless otherwise specified, the terms "mail," "provide," "file," "submit," and "send" are interchangeable and mean to properly transmit, deliver, or distribute:

(a) By email or other electronic services; or

(b) In another format approved by the department.

(2) This section does not apply to appeals filed under Title 50A RCW.

NEW SECTION

**WAC 192-500-030 Willful.** "Willful" and "willfully" means a knowing and intentional act or omission, unless otherwise defined in Title 50A RCW.

NEW SECTION

**WAC 192-500-035 Interested parties.** (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in family or medical leave determinations related to the state plan and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in family or medical leave determinations related to a voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee that is required to provide information to the department related to the determination or appeal in question.

(4) Other interested parties in a determination related to a small business assistance grant include the employer requesting the grant.

NEW SECTION

**WAC 192-500-040 Aggrieved person.** An "aggrieved person" is any interested party who receives an adverse decision from:

(1) The department for which the department has provided notice of appeal;

(2) The office of administrative hearings; or

(3) The commissioner's review office.

**Chapter 192-510 WAC****ASSESSING AND COLLECTING PREMIUMS**NEW SECTION

**WAC 192-510-045 How will the department assess the size of employers for calendar years 2019 and 2020?**

(1) For the purposes of premium assessment for calendar year

2019, the department will determine the size of all employers by reviewing the number of employees reported pursuant to WAC 192-540-030 for the first calendar quarter. Employers that report fifty or more employees will be required to pay the employer share of the premium for all calendar quarters in calendar year 2019.

(2) On September 30, 2019, the department will average the number of employees reported over the quarters for which reporting exists to determine employer size for calendar year 2020.

#### NEW SECTION

**WAC 192-510-065 When can an employer deduct premiums from employees?** (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW 50A.04.115 (3)(d) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

#### NEW SECTION

**WAC 192-510-066 How are premium payments applied?** (1) A payment received with a premium assessment will be applied to the quarter for which the premium assessment is filed. A payment exceeding the legal fees, penalties, interest and premiums due for that quarter will be applied to any other debt as provided in subsection (2) of this section. If no debt exists, a refund will be issued for any premium overpayments of fifty dollars or more. Premium overpayments of less than fifty dollars will be credited to future premium assessments.

(2) Payments received will be applied in the following order of priority:

- (a) Current quarter balance;
- (b) Any previous quarter premium balance starting with the oldest quarter;
- (c) Then beginning with the oldest quarter in which a balance is owed:
  - (i) Penalties;
  - (ii) Fees; and
  - (iii) Interest charges.

### Chapter 192-530 WAC

### VOLUNTARY PLANS

#### NEW SECTION

**WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments?** An employer with an approved voluntary plan must send the first benefit payment to the employee within thirty calendar days of the first day of leave, or the receipt of a properly completed application for benefits, whichever is later. Subsequent payments must be sent on the established regular pay schedule at

no longer than monthly intervals. Failure to adhere to these requirements may result in the termination of the voluntary plan by the department.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-530-060 What happens at the end of a voluntary plan?** (1) If the employer chooses to withdraw from a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums, the employer must ~~((notify))~~ provide notice to the department at least thirty ~~((calendar days before the withdrawal. Notification of withdrawal shall be submitted to the department online or in another format approved by the department.~~

(2)) days prior to the date that the change goes into effect. The plan will be considered withdrawn on the date of the change. The employer must remit any deductions from the wages of an employee remaining in the possession of the employer to the department within thirty days of the effective date of the withdrawal.

(2)(a) If the employer chooses to withdraw from a voluntary plan for any other reason, the employer must provide notice to the department at least thirty days prior to the end of a calendar quarter. The plan will be considered withdrawn on the first day of the following calendar quarter.

(b) If notice is provided less than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal.

(c) The employer must remit any deductions from the wages of an employee remaining in the possession of the employer to the department within thirty days of the effective date of the withdrawal.

(3) If the department ~~((has terminated))~~ terminates an employer's ~~((participation in a))~~ voluntary plan, the department will notify the employer of the effective date and the reason for termination. The department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until thirty calendar days after the date of the invoice.

(4) Benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.

(a) On the effective date of a voluntary plan termination, employees currently receiving paid family or medical leave benefits are, if otherwise eligible, immediately entitled to benefits from the state program.

(b) For employees currently receiving paid family or medical leave benefits on the effective date of a voluntary plan withdrawal, the employer will have the option to:

(i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or

(ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that is actually taken.

(c) On the effective date of a voluntary plan termination or withdrawal, employees currently taking family or medical leave under this chapter are, if otherwise eligible, entitled to the job protection provisions of RCW 50A.04.600(5) until the duration of leave ends.

(5) Employers are required to notify employees of any plan withdrawal or termination within five business days of notification by the department of the effective date of termination or withdrawal.

#### NEW SECTION

**WAC 192-530-070 What is good cause for terminating an approved voluntary plan?** The department may terminate a voluntary plan if there is a risk that benefits will not be paid or for other good cause shown. Good cause for terminating a voluntary plan includes, but is not limited to, an employer's failure to:

- (1) Pay timely and accurate paid family or medical leave benefits;
- (2) Provide leave for a qualified event;
- (3) Protect the employment and employment benefits of an employee when required;
- (4) Provide complete quarterly reports;
- (5) Report to the department any amendments made to the voluntary plan;
- (6) Adhere to the approved voluntary plan; or
- (7) Adhere to the requirements of Title 50A RCW or chapter 192-500 WAC and thereafter (chapters 192-500 through 192-999 WAC).

### Chapter 192-540 WAC

#### EMPLOYER RESPONSIBILITIES

#### NEW SECTION

**WAC 192-540-010 When must an employer send notice to employees who may need paid family and medical leave?** (1) Employers must provide a written notice of employee rights to any employee when an employer becomes aware that the employee is taking family leave, medical leave, or a combination of both for a duration of more than seven consecutive days of work. The employer must use a notice provided by the department.

(2) The notice must be sent to the employee by the fifth business day after the employee's seventh consecutive missed day of work due to family or medical leave, or by the fifth business day after the employer becomes aware that the employee's absence is due to family or medical leave, whichever is later.

#### NEW SECTION

**WAC 192-540-020 What are the employer requirements for posting notice in a work place?** (1) Employers must post and keep posted a notice regarding pertinent provisions of Title 50A RCW and filing of complaints in a common area, such as a break room or other area where such notices are customarily posted.

(2) Employers must use a standard notice that the department makes available or a notice developed by the employer, which must be approved by the department. The notice developed by the employer must be submitted to the department and contain the following:

- (a) Information on how an employee may file a claim;
- (b) Information about filing a complaint against an employer;
- (c) Responsibilities for premium payments;
- (d) Information including rights to the paid family and medical leave program as provided by the state or the employer's voluntary plan; and
- (e) The minimum and maximum provisions available for paid family or medical leave, including:

- (i) Weekly benefit amount;
  - (ii) Maximum weeks available under paid family or medical leave; and
  - (iii) How long the benefit is available after the employee applies.
- (3) Employers can be audited to determine if a proper notice with pertinent information is displayed.
- (4) Failure to post this notice may result in a penalty of one hundred dollars for each instance in which the department determines the employer has willfully failed to comply with this requirement. The department will deposit any penalties collected in accordance with this section into the paid family and medical leave enforcement account.

#### NEW SECTION

**WAC 192-540-025 Is notice required if an employer reduces the portion of employee premiums it is electing to pay?** An employer that elects to pay all or a portion of its employees' premiums, must give written notice at least one pay period in advance of any reduction to its elected payment.

#### NEW SECTION

**WAC 192-540-030 What are employers required to report to the department?** (1) Each calendar quarter, every employer must file a complete report with the department. The report must include each employee's:

- (a) Full name;
  - (b) Social Security number;
  - (c) Zip code of primary work location;
  - (d) Job title;
  - (e) Start date;
  - (f) Wages paid during that quarter; and
  - (g) Total hours worked during that quarter.
- (2) The report must include the total amount of premiums deducted from all employees' wages, if any, during the calendar quarter.

(3) If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the

employer should use the Social Security number when filing the report of the employee's wages.

#### NEW SECTION

**WAC 192-540-040 How should employers report hours worked for each calendar quarter?** Each calendar quarter, employers must report to the department the number of hours worked by each employee. Employers must include the following hours in the report.

(1) **Hourly employees.** Report the total number of hours worked by each employee.

(2) **Employees on salary.** Report forty hours for each week in which a full-time, salaried employee worked.

(3) **Vacation pay, sick leave pay, paid time off.** Report the number of hours an employee is on paid leave. Do not report hours for a cash out of leave.

(4) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(5) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee at forty hours worked for each week in which any of their duties were performed.

(6) **Wages in lieu of notice.** Report the actual number of hours for which an employee was paid.

(7) **Faculty employees.**

(a) To be considered full time, faculty members of community and technical colleges must meet the definition of "full time" as defined in RCW 28B.50.489.

(i) For full-time faculty members, report thirty-five hours per week.

(ii) For part-time faculty members, multiply thirty-five hours by the percentage that is equal to the percentage of hours worked in relation to a full-time faculty member consistent with RCW 28B.50.4891.

**Example:** A technical college deems a teaching workload of fifteen hours per week to be full time. An instructor teaches a workload of twelve hours per week. Twelve divided by fifteen is eighty percent. Eighty percent of thirty-five is twenty-eight. Report twenty-eight hours per week.

(b) Part-time faculty members may overcome the presumption of hours established by this formula by providing the department with sufficient evidence of hours worked that exceeds the hours reported by employer.

(8) **Severance pay.** Do not report hours for severance pay.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(11) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis,

report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

(12)(a) **On-call and standby hours.** Report the number of actual hours for which an employee receives wages for being on call or on standby with the employer. Do not report hours for which an employee is scheduled to check in before work, and if not required to work, has no further obligations.

(b) For the purpose of this section, "on-call" and "standby" hours are defined as paid hours when employees must comply with employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specific time frame.

#### NEW SECTION

**WAC 192-540-050 When are employers required to submit quarterly reports to the department?** The quarterly reports referenced in WAC 192-540-030 must be submitted by the last day of the month following the end of the calendar quarter being reported. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day.

### Chapter 192-550 WAC

#### PENALTIES AND AUDITS

#### NEW SECTION

**WAC 192-550-010 What happens if an employer fails to submit required reports?** (1) An employer that willfully fails to file a complete and timely report under WAC 192-540-030 through 192-540-050 is subject to penalties under RCW 50A.04.090.

(2) The department will send a warning letter for an employer's first incomplete or untimely report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

(a) 2nd occurrence: \$75.00

(b) 3rd occurrence: \$150.00

(c) 4th and subsequent occurrences: \$250.00

(3) After five years without a warning letter or occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

#### NEW SECTION

**WAC 192-550-020 What happens if an employer willfully fails to remit required payments?** (1) An employer that willfully fails to remit payment for premiums in full when due is subject to penalties under RCW 50A.04.090 in addition to accruing interest under WAC 192-550-030.

(2) The total amount of the penalty will be equal to the entire balance of premiums not remitted and any interest accrued on those delinquent premiums.

**Example:** If an employer owes \$300 in premium payments and \$20 in interest, the penalty for willfully failing to

remit payment will equal \$320, for a sum total due and owing of \$640.

#### NEW SECTION

**WAC 192-550-030 How will the department calculate interest on delinquent payments?** (1) When an employer fails to remit payment by the due date, the remaining unpaid balance shall accrue interest at a rate of one percent, compounded monthly, until payment is received in full.

(2) The department will issue a notice to employers whose payments are delinquent. The notice will include the total amount due for all applicable premiums, penalties, and interest under Title 50A RCW.

#### NEW SECTION

**WAC 192-550-040 Can employer interest be waived?**

(1) An employer may submit to the department an interest waiver request that includes all relevant facts, including all available proof, as to why it is requesting a waiver under RCW 50A.04.140.

(2) At its discretion, the department may waive interest if it finds that the interest was caused by the department's own error or the department's inability to decide the issue.

#### NEW SECTION

**WAC 192-550-050 Audit procedures.** (1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50A RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within ten business days or a time frame agreed to by the department.

(3) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.

#### NEW SECTION

**WAC 192-550-080 What happens if an employer fails to provide requested information to the department for an audit?** Employers must provide all requested documentation as it pertains to the paid family and medical leave program. If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to the department. This may include information from the same employer, similar employers, labor market information, information provided to other state or local agencies, or the best information otherwise available to the department.

## Chapter 192-560 WAC

### SMALL BUSINESS ASSISTANCE

#### NEW SECTION

**WAC 192-560-010 Which businesses are eligible for small business assistance grants?** (1) Employers determined to have one hundred fifty or fewer employees in the state that are assessed the employer share of the premium are eligible to apply for small business assistance grants.

(2) Employers determined to have fewer than fifty employees are only eligible to apply for a small business assistance grant if they opt to pay the employer share of the premiums. The employer will be assessed the employer share of the premium for a minimum of three years after any grant is received. An employer may provide notice for opting out after the three-year period.

(3) An employer may request only one grant for each period of paid family or medical leave taken by an employee. Submissions under (a) and (b) of this subsection do not qualify as grant applications and therefore do not count against the employer's limit of ten applications per year.

(a) An employer that qualifies for a grant under RCW 50A.04.230 (3)(b) for an amount that is less than one thousand dollars may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.04.230 (3)(c) in an attempt to qualify for additional grant funds.

(4) An employer must apply for the grant no later than four months following the last day of the employee's paid family or medical leave.

#### NEW SECTION

**WAC 192-560-020 What is the application process for a small business assistance grant?** (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested;

(c) An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and

(d) Written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ten applications per year under RCW 50A.04.230(4).

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) If a grant application is denied, the application will count against an employer's limit of ten applications per year.

(5) The denial of a grant application is appealable.

#### NEW SECTION

**WAC 192-560-030 What are significant additional wage-related costs for the purposes of small business assistance grants?** Significant additional wage-related costs are added expenses incurred by the small business due to an employee's use of leave and include:

- (1) Paying additional wages to an existing employee;
- (2) Outsourcing costs;
- (3) Certification;
- (4) Equipment purchases; or
- (5) Other costs that the department, in its discretion, determines are appropriate.

### **Chapter 192-570 WAC DISPUTE RESOLUTION**

#### NEW SECTION

**WAC 192-570-010 Conference and conciliation.**

(1)(a) The department will engage employers in conference and conciliation when the employer fails to make all required:

- (i) Premium payments;
- (ii) Payments on penalties assessed by the department for the failure to submit required reports; or
- (iii) Payments on penalties assessed by the department for violations related to voluntary plans.

(b) "Conference and conciliation" for the purpose of this chapter means to encourage an amicable resolution of disputes between the employer and the department prior to the issuance of a warning letter.

(2) The department will promptly attempt to contact the employer to engage in conference and conciliation when appropriate under subsection (1) of this section. If the department does not receive a response from the employer by the deadline given, the department will attempt the contact again, for a total of two attempts. A warning letter will be sent to the employer if no contact can be made.

(3)(a) Through conference and conciliation employers will be given an opportunity to provide information and to explain their reasons for failing to meet the department's requirements in subsection (1) of this section. The department will not issue a warning letter if:

- (i) The employer provides good cause;
- (ii) The department determines that the good cause prevented compliance; and
- (iii) The parties agree to an approved repayment schedule.

(b) "Good cause" for the purpose of this section means:

- (i) Death or serious illness of one or more persons directly responsible for discharging the employer's duties under Title 50A RCW;

(ii) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer; or

(iii) Fraud or theft against the employer.

(4) The burden of proof is on the employer to provide all pertinent facts and evidence or documentation for the department to determine good cause.

(5) Conference and conciliation is only available to employers that meet the requirements of RCW 50A.04.080, 50A.04.090, and 50A.04.655. Those employers that do not meet these requirements will be issued a warning letter without entering conference and conciliation. Penalties and interest will be assessed thereafter under Title 50A RCW and the rules adopted pursuant thereto.

(6) The department will issue a warning letter when:

- (a) The employer does not comply with the approved repayment schedule; or
- (b) A resolution is not reached through conference and conciliation.

#### NEW SECTION

**WAC 192-570-020 Complaints regarding unlawful acts.** (1) It is unlawful for an employer to discriminate against any employee for a reason specified in RCW 50A.04.085. When the department receives notification from an employee that discrimination may have occurred the department will investigate the allegation and issue a determination. The determination will include any remedies available under RCW 50A.04.100.

(2) Nothing in the chapter shall be construed to prohibit a private right of action under all applicable laws.

### **Chapter 192-800 WAC PRACTICE AND PROCEDURE**

#### NEW SECTION

**WAC 192-800-002 Untimely appeals.** Late appeals will be sent to the office of administrative hearings to determine if the appellant had good cause to file a late appeal.

### **WSR 18-17-119 PROPOSED RULES DEPARTMENT OF HEALTH [Filed August 17, 2018, 11:43 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: WAC 246-296-040 Use of funds by the state, 246-296-060 Establishing a drinking water state revolving fund (DWSRF) loan fee, loan fee account, and loan fee uses, and 246-296-080 Ineligible projects and project-related costs. This rule making will clarify and align WAC 246-296-040 with the federal rule under 40 C.F.R. Part 35 for set-aside activities which will allow the department of health (department) to broaden the

use of the loan fee account. This rule making will amend WAC 246-296-060 to include the use of the loan fee account for projects that are eligible to receive a DWSRF loan under 40 C.F.R. 35.3520. The United States Environmental Protection Agency (EPA) has the authority to grant a deviation for prohibited projects on a case-by-case basis. This rule making will amend WAC 246-296-080 to allow projects currently prohibited from receiving a DWSRF loan under 40 C.F.R. 35.3535 to be considered eligible to receive funds when EPA grants a deviation. This change will allow the department to request a deviation from EPA on a case-by-case basis.

Hearing Location(s): On September 26, 2018, at 10:00 a.m., at the Department of Health (DOH), Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: October 3, 2018.

Submit Written Comments to: Theresa Phillips, DOH, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by September 26, 2018.

Assistance for Persons with Disabilities: Contact Theresa Phillips, phone 360-236-3147, TTY 360-833-6388 or 711, email [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@doh.wa.gov), by September 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 246-296-040 only allows the department to use the loan fee for program administrative activities. However, 40 C.F.R. Part 35 allows other uses. This rule making will align the state rule with the federal rule to give the department the ability to use the loan fee for projects such as consolidation feasibility studies. WAC 246-296-060 disallows the use of the loan fee account funds for purposes other than program administration. This rule making will allow the department to also use the loan fee account for projects that are eligible to receive a loan. WAC 246-296-080 will identify that EPA may grant a deviation for projects normally prohibited from receiving a loan such as dam rehabilitation, and purchasing water rights.

Reasons Supporting Proposal: The DWSRF loan program provides low-interest loans to help public water systems build, repair, and redesign public water system infrastructure. The department's public health protection goals are to help public water systems provide safe and reliable drinking water to their communities by addressing problems such as replacing aging infrastructure, installing treatment to remove contaminants, restructuring failing water systems, and responding to drinking water emergency events. This rule making better serves the department's public health protection goal of loaning funds to public water systems by fully using the authorities provided in the federal rule which allow more uses of the loan fee account for infrastructure improvement projects, and allow deviations for projects otherwise prohibited from receiving a loan on a case-by-case basis.

Statutory Authority for Adoption: RCW 70.119A.170.

Statute Being Implemented: RCW 70.119A.170.

Rule is necessary because of federal law, 40 C.F.R. 35.3520 and 35.3535.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation and Enforcement: Janet Cherry, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3153.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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: A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(c), an SBEIS is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards. The proposed rule is being adopted to conform with Section 1452 of the Safe Drinking Water Act and 40 C.F.R. Part 35. If the state does not adopt the proposed rule, the state will not be able to allow more uses of the loan fee account nor will it be able to request and receive deviations from EPA for infrastructure improvement projects.

Is exempt under RCW 19.85.025(3) as the 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 statewide 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.

Explanation of exemptions: The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rule[s] of other Washington state agencies, or national consensus codes that generally establish industry standards.

August 14, 2018  
Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

**WAC 246-296-040 Use of funds by the state.** (1) The department may use the following funds to carry out the purposes of the DWSRF:

- (a) Capitalization grants provided by the federal government;
  - (b) State matching funds appropriated under RCW 70.119A.170;
  - (c) Principal and interest payments;
  - (d) DWSRF loan fees; and
  - (e) Any other funds earned and deposited.
- (2) The department may use these funds to:
- (a) Finance DWSRF loans for planning, design, and construction of public water system infrastructure projects that will address or prevent violations of applicable federal, state, and local drinking water requirements;
  - (b) Finance reasonable costs for the department to administer the DWSRF program; and
  - (c) Fund set-aside activities as authorized in ~~((categories (b) through (e) of))~~ 40 C.F.R. Section 35.3535 ~~((of the SDWA,))~~ including, but not limited to:
    - (i) DWSRF program administration;
    - (ii) Technical assistance specific to small public water systems;
    - (iii) State drinking water program management; and
    - (iv) Local assistance and other state programs.

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

**WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses.** (1) The department shall:

- (a) Establish the terms of a DWSRF loan fee; and
  - (b) Annually set the DWSRF loan fee amount.
- (2) The department shall set the DWSRF loan fee for each project.
- (3) The DWSRF loan amount may include the DWSRF loan fee.
- (4) The department shall determine the amount of DWSRF loan fee account funds to be used for program administration.
- (5) The department shall use DWSRF loan fees ~~((only))~~ for program administration activities and for projects in accordance with WAC 246-296-040.
- (6) The department shall deposit and retain DWSRF fees in a dedicated DWSRF loan fee account.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

**WAC 246-296-080 Ineligible projects and project-related costs.** Except for projects and project-related costs under subsections (1) and (2) of this section, which are considered eligible to receive funds when EPA grants a deviation as allowed under Section 1452 of the SWDA, the following projects and project-related costs ~~((that))~~ are not eligible for assistance from the DWSRF program ~~((include))~~:

- (1) Acquiring, building, or repairing dams or raw water reservoirs;
- (2) Acquiring water rights, except if the water rights are owned by a public water system that is being acquired by restructuring;
- (3) Laboratory costs for monitoring;
- (4) Operation and maintenance costs;
- (5) Projects needed primarily for fire protection;
- (6) Projects needed primarily to serve future population growth;
- (7) Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;
- (8) Projects for an individual water supply system or a Group B public water system unless the public water system is being restructured into a Group A public water system under WAC 246-296-110; and
- (9) Projects that are solely for the purpose of installing service meters.

### WSR 18-17-125

#### PROPOSED RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Filed August 17, 2018, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-109 on September 20, 2017.

Title of Rule and Other Identifying Information: Chapter 220-359 WAC, Commercial fisheries—Columbia River above Bonneville Dam.

Hearing Location(s): On November 1, 2018, at 8:00 a.m., at the Washington Department of Fish and Wildlife (WDFW) Region 5 Office, 5525 South 11th Street, Ridgefield, WA 98642.

Date of Intended Adoption: November 3, 2018.

Submit Written Comments to: Scott Bird, WDFW Rules Coordinator, 43200, Mailstop 43153, Olympia, WA 98504, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, fax 360-902-2179, email dolores.noyes@dfw.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department needs to amend sections in chapter 220-359 WAC in order to make them more consistent with Oregon rules concerning the concurrent jurisdiction of the Columbia River. These changes will clarify the rules in the area for the public and allow the rules to be more enforceable for the department.

Reasons Supporting Proposal: Parties have agreed through the *U.S. v. Oregon* Fish Management Process and the regulatory consistency committee to amend inconsistent rules to ensure uniformity, to provide clarity, and to increase enforceability of regulations in waters of concurrent jurisdiction. Portions of Title 220 WAC require amendments to reflect changes already implemented by Oregon and tribal governments concerning this federal case.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 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 and Implementation: Captain Jeff Wickersham, 5525 South 11th Street, Ridgefield, WA, 360-906-6714; 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 does not affect hydraulics.

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.

August 17, 2018

Scott Bird  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-359-010 Indian fishery—Area and qualification.** (1) It is unlawful for any person to take, fish for or possess (~~food~~) fish for treaty related ceremonial, subsistence or commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 (~~except that it is permissible for individuals possessing treaty fishing rights pursuant to the Yakima Treaty (12 Stat. 951), the Warm Springs Treaty (12 Stat. 963), the Umatilla Treaty (12 Stat. 945), and the Nez Perce Treaty (12 Stat. 957), while having on his or her person his or her Federal Tribal Identification Card to take, fish for and possess food fish for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 in accordance with the rules in this chapter~~) unless:

(a) The person has in possession a valid identification card issued by the tribal registrar showing the person to be a duly enrolled member of the Nez Perce, Umatilla, Warm Springs, or Yakama tribes who can lawfully exercise treaty fishing rights;

(b) The person submits the valid identification card to any federal, state, or local tribal officer upon request; and

(c) The commercial or subsistence fishing season is open by department rule or the ceremonial fishing is authorized by a valid permit issued by the treaty fishers tribe.

(2) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550.

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-359-020 Commercial seasons—((Salmon) Fish.** (1) It shall be (~~lawful~~) unlawful to take, fish for and possess (~~salmon~~) fish for commercial purposes (~~taken with drift gillnets and set nets not exceeding 300 feet in length, and with dip nets and hoop nets~~) in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H (~~during the following season:~~

No open season) except as allowed in this chapter or by emergency regulation.

(2) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550.

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-359-040 Lawful ((salmon)) fishing gear—Mesh.** (1) It shall be unlawful to take, fish for or possess (~~salmon~~) fish taken for commercial purposes with any net in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H (~~containing gillnet mesh larger than 4 1/2 inches stretch measure during the period 12 noon June 28 to 12 noon July 2; and containing mesh smaller than 7 1/4 inches stretch measure during the period 12 noon August 9 to 12 noon August 20~~) except as provided for in emergency regulation.

(2) Violation of this section is punishable as a gross misdemeanor under RCW 77.15.520.

**AMENDATORY SECTION** (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

**WAC 220-359-060 Off-reservation Indian subsistence fishing.** (1) It is unlawful for any person (~~, including treaty Indian fishermen,~~) to take, fish for, or possess (~~salmon or other food~~) fish for subsistence purposes (~~except in accordance with the provisions of this section.~~

(2) It is lawful for individuals possessing) in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, 1H, and 1E1 unless:

(a) The person possesses treaty fishing rights pursuant to the Yakima Treaty, the Warm Springs Treaty, the Umatilla Treaty, and the Nez Perce Treaty to fish (~~for food fish for subsistence family use purposes subject to the following provisions:~~

~~(a))~~; and

(b) Such fishing ((is permitted year round)) occurs in the following areas:

(i) That area of the mainstem Columbia River from a line between a marker on the Washington shore and a marker on the Oregon shore, such line located approximately one-half mile upstream from the mouth of Eagle Creek, upstream to a point at the four-second flashing light #67 approximately 1/2 mile downstream of the Dalles Bridge; that area of the mainstem Columbia River from a point 200 feet above the Dalles Dam fishway exit upstream to a point 600 feet downstream of the John Day Dam fishway entrance; and

(ii) That area of the mainstem Columbia River from a point 200 feet above the John Day Dam fishway exit

upstream to a point at the downstream end of the wingwall of the McNary Dam boat lock; that area of Columbia River from a point 200 feet above the McNary Dam fishway exit upstream to the Highway 12 bridge; excluding those areas within 1/4 mile radius of the mouth of Wind River, Little White Salmon River (Drano Lake), Klickitat River, and Spring Creek Hatchery fishway entrance.

~~((b) Lawful fishing gear by treaty Indians in the above-designated area includes)) (c) The fishing gear used is limited to dip nets and bag nets of a mesh size not exceeding 5 inches attached to a hoop 24 feet or less in circumference, spear, gaff, and club, ~~((and foul hook.~~~~

~~(e)) except it is lawful to use sport angling gear in places and at times allowed under chapter 220-310 WAC ((series)) for treaty Indian subsistence purposes.~~

~~(d) ((It is unlawful to use drift gillnets or set gillnets for treaty Indian subsistence fishing in the mainstem of the Columbia River except as authorized by the director of the department of fish and wildlife under the provisions of WAC 220-359-110.~~

~~(e) It is unlawful to use gillnets, set nets, hoop nets, dip or bag nets with a mesh size exceeding 5 inches, set lines, or any other type of fishing gear not otherwise specifically authorized except during times and in areas where such gear is authorized for commercial fishing purposes.~~

~~(3)) The owner's tribal affiliation and enrollment number is either placed on the upper side of the hoop, or on a tag attached to the hoop, pole, or cable.~~

~~(e) The fishing is authorized by tribal regulation.~~

~~(2) In accordance with RCW 77.12.453, it is lawful for ((the following)) Wanapum Indians to take, fish for, and possess food fish for subsistence purposes in the vicinity of Priest Rapids Dam ((in specified areas at specified times using specified gear authorized)) provided that a permit has been issued by the director of the department of fish and wildlife and all conditions followed. ((The)) Individuals will be designated ((below may be revised from time to time)) by agreement between the Wanapum Indians and the director of the department of fish and wildlife((:~~

|               |                           |
|---------------|---------------------------|
| Frank Buck    | Jade Buck                 |
| Stanley Buck  | Robert S. Tomanawash, Sr. |
| Willie Buck   | Lester Umtueh             |
| Harry Buck    | Grant Wyena               |
| Ken Buck      | Jerry Wyena               |
| Rex Buck, Jr. | Douglas Wyena             |
| Phillip Buck  | Jimmy Wyena               |
| Richard Buck  | Patriek Wyena))           |

or the director's designee.

The following provisions apply to this fishery:

~~(a) ((It is unlawful to fish at any time, place, or using gear other than that designated by the director of the department of fish and wildlife and authorized by regulation.~~

~~(b)) It is unlawful for Wanapum Indian fishermen to fail to report, in writing, their total catch to the department of fish and wildlife within five days of the end of fishing activity under this subsection ~~((3)(a) of this section))~~.~~

~~((e)) (b) Should any Wanapum Indian be convicted of violating the provisions of this section, or sell, barter, or attempt or sell or barter any fish taken in this fishery or any treaty Indian fishery, that fishermen will be ineligible to further participate in the Wanapum Indian subsistence fishery unless otherwise determined by the director of the department of fish and wildlife.~~

~~((4)) (3) It is unlawful to sell, barter, or offer for sale or barter, buy, or for a ~~((commercially licensed fish dealer or)) person acting in the capacity of a~~ wholesale fish buyer to have in possession ~~((food))~~ fish taken in an Indian subsistence fishery ~~((under the provisions of subsections (2) and (3) of this section.~~~~

~~(5)) unless authorized by department rule.~~

~~(4) It is unlawful for fishermen participating in an Indian subsistence fishery to fail to submit their catch to department of fish and wildlife employees for the conduct of biological sampling or to fail to allow necessary biological samples to be taken.~~

~~(5) Violation of this section is punishable as:~~

~~(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;~~

~~(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and~~

~~(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.~~

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-359-070 Season and gear—Shad.** (1) It shall be lawful to take, fish for and possess shad taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H ~~((with single wall floater gillnet and set net gear containing mesh of a size not less than 5-3/8 inches or larger than 6-1/4 inches stretch measure and said mesh webbing shall be of a breaking strength not greater than a 10-pound pull from 12 noon July 4 to 12 noon July 11. It shall be unlawful to sell any salmon taken during this lawful shad fishery)) during the times and with the gear types as prescribed by emergency rule.~~

~~(2) It is unlawful to sell any salmon, steelhead or sturgeon taken during a lawful shad fishery except as allowed by department rule.~~

~~(3) It is unlawful to set or operate set net, drift net, or set lines for shad unless the owner's tribal affiliation and enrollment number is placed upon or adjacent to the end corks or set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached.~~

~~(4) Violation of this section is punishable as:~~

~~(a) A gross misdemeanor or felony under RCW 77.15.550 regarding seasons; and~~

~~(b) A gross misdemeanor under RCW 77.15.520 regarding gear.~~

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

**WAC 220-359-080 Season—Sturgeon.** (1) It is unlawful to take, fish for or possess sturgeon taken for commercial

purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H except individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with setline gear from January 1 through January 31, and during seasons opened under emergency rule by the department and as provided in this section.

(2) During the open season, it is unlawful to:

(a) Retain for commercial or subsistence purposes sturgeon less than 38 inches in fork length or greater than 54 inches in fork length in Columbia River Salmon Management and Catch Reporting Area (SMCRA) 1F. It is unlawful to retain for commercial or subsistence purposes sturgeon less than 43 inches in fork length or greater than 54 inches in fork length in Columbia River SMCRA 1G and 1H;

(b) Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to the sale of the sturgeon to anyone acting in the capacity of a wholesale fish buyer (~~(endorsed under chapter 77.65 RCW,)~~) or to sell or barter sturgeon eggs at retail; or

(c) Deliver to anyone acting in the capacity of a wholesale fish buyer (~~(endorsed under chapter 77.65 RCW,)~~) any sturgeon that are not in the round with the head and tail intact.

(3) (~~Gear:~~

~~(a) Maximum~~) It is unlawful to deploy or operate fishing gear except as follows:

(a) Not to exceed maximum 100 hooks per setline;

(b) Minimum hook size may not be less than 9/0;

(c) Treble hooks prohibited; (~~and~~)

(d) (~~Visible buoys required, with operator name and tribal identification clearly marked on the buoy~~) Buoys must be visible; and

(e) The owner's tribal affiliation and enrollment number must be placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached.

(4) All sturgeon not of legal size shall be released to the water unharmed. Sturgeon not captured for legal harvest shall not be possessed on land. For purposes of this section, docks and boat ramps are not considered land.

(5) Violation of this section is punishable as follows:

(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;

(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and

(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-359-090 Closed areas ((salmon))—River mouths.** It shall be unlawful to take, fish for or possess ((salmon)) fish taken for commercial purposes in or from the following designated closed waters adjacent to the mouths of streams tributary to Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H during the time periods specified.

(1) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline of the mouths of Hood River, Deschutes River, and Umatilla River are closed the entire year.

(2) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to three-quarters mile downstream from the western shoreline of the mouth of the Little White Salmon River are closed the entire year.

(3) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline of the mouths of Herman Creek and the Big White Salmon River are closed from August 1 to November 1 of each year.

(4) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouths of the Klickitat River and Wind River are closed the entire year.

(5) Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouth of Spring Creek are closed from August 1 to November 1 of each year.

(6) Violation of this section is punishable as a gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

**WAC 220-359-110 Columbia River—Columbia River off-reservation treaty Indian ceremonial fishing.** (1) It shall be unlawful for any Indian to conduct ceremonial fishing on the Washington side of the Columbia River or in Washington Columbia River tributaries outside of an Indian reservation without first providing at least one week advance written notification to the director of the Washington state department of fish and wildlife, including all of the following information:

(a) Name, place, and time of ceremony for which fish will be used.

(b) Name of individuals and helpers who will be fishing and transporting fish. Only these individuals will be allowed to fish on the occasion covered by the notice.

(c) Exact location(s) of fishing and the amount of gear to be used at each location.

(d) Exact beginning and ending dates of ceremonial fishing.

(e) Type of gear to be used in ceremonial fishing.

(f) Estimated number of pounds of fish needed for ceremonial fishing.

(g) If fish are to be stored prior to a ceremony, the location of storage must be identified. If they are not to be stored, it must be so indicated.

(h) The signature of the designated tribal official certified to the Washington department of fish and wildlife in advance.

(2) It shall be unlawful to:

(a) Fish for ceremonial purposes with commercial fishing gear except in those areas where such fishing gear is authorized for commercial fishing((-));

(b) Deploy or operate fishing gear unless the owner's tribal affiliation and enrollment number is placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached;

(c) Engage in ceremonial fishing during any portion of a week within a commercial fishing season which is closed to commercial fishing((-);

(e));

(d) Sell or barter, offer for sale or barter, buy, or for a ~~((commercial))~~ person acting in the capacity of a wholesale fish buyer ~~((or fish dealer))~~ to have in his possession fish taken for ceremonial purposes((-

(d));

(e) Engage in ceremonial fishing unless done in compliance with all provisions contained in the advance notice to the department of fish and wildlife of the state of Washington.

(3) ~~((Any individual engaged in ceremonial fishing must have in his))~~ It is unlawful for any person engaged in ceremonial fishing to fail to have in possession a signed copy or duplicate copy of the written tribal notification to the director of the Washington state department of fish and wildlife that such fishing is to be conducted.

(4) ~~((All fishing gear shall be marked and identified at all times while fishing for ceremonial purposes.~~

(5)) A record of the numbers of fish taken for ceremonial purposes will be made and sent promptly to the director of the Washington state department of fish and wildlife upon conclusion of each ceremonial fishing activity.

(5) Violation of this section is punishable as:

(a) A gross misdemeanor or felony crime under RCW 77.15.550 regarding seasons and times;

(b) A gross misdemeanor under RCW 77.15.520 regarding gear; and

(c) A felony crime under RCW 77.15.260 regarding trafficking of fish not allowed by department rule.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-359-030 Weekly open fishing periods—Salmon.

WAC 220-359-050 Open area salmon—Lone Pine.

WAC 220-359-100 Unlawful provision—Salmon.

**WSR 18-17-134**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed August 20, 2018, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-097.

Title of Rule and Other Identifying Information: The Washington utilities and transportation commission has been engaged in this rule making to adopt a new chapter in Title 480 WAC to implement ESSB 5939 by establishing rules governing community solar companies. At this time, the commission proposes chapter 480-103 WAC, Community solar companies.

Hearing Location(s): On September 26, 2018, at 1:30 p.m., at the Richard Hemstad Building, Room 206, 1300 South Evergreen Park Drive S.W., Olympia, WA 98503 [98504]. Public hearing to consider adoption of proposed rules.

Date of Intended Adoption: September 26, 2018.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email records@utc.wa.gov, fax 360-586-1150, by September 21, 2018.

Assistance for Persons with Disabilities: Contact Ashley Miller, phone 360-664-1130, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email ashley.miller@utc.wa.gov, by September 14, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to adopt new rules governing community solar companies.

Reasons Supporting Proposal: The commission was required to adopt new rules governing community solar companies in order to implement ESSB 5939.

Statutory Authority for Adoption: RCW 34.05.020.

Statute Being Implemented: RCW 80.01.040.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1355; Implementation and Enforcement: Mark L. Johnson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1115.

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 commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

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 rules implement the legislative requirement that the commission register community solar companies and provide appropriate consumer protections. The proposed rules adopt regulations that are comparable to the registration and consumer

protection safeguards that the commission has adopted for other regulated industries and that have been in place for many years. The commission issued a notice requesting information on the costs companies anticipate they would incur as a result of the proposed rules. The commission received no responses. The commission is otherwise unaware that such regulations impose more-than-minor costs or that any costs disproportionately impact small businesses. The commission, therefore, concludes that the proposed rules will not impose more-than-minor costs on businesses.

A copy of the detailed cost calculations may be obtained by contacting Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.E., Olympia, WA 98504, phone 360-664-1160, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email records@utc.wa.gov.

August 20, 2018  
Mark L. Johnson  
Executive Director  
and Secretary

## Chapter 480-103 WAC

### COMMUNITY SOLAR COMPANIES

#### PART I

#### GENERAL PROVISIONS

#### NEW SECTION

**WAC 480-103-001 Purpose and application.** (1) **Purpose.** The purpose of these rules is to administer and enforce the provisions of chapter 80.28 RCW that govern community solar companies. The rules establish general requirements and specific regulations for registration, consumer protection, records, and reporting for such companies.

(2) **Application.** The rules in this chapter apply to any community solar company, any administrator acting on behalf of a community solar company, and where specified, any investor-owned utility operating a community solar project that is subject to the jurisdiction of the commission under RCW 80.04.010 or chapter 80.28 RCW. These rules also include requirements for customers, project participants, and applicants.

(3) **Nonexclusivity.** These rules do not relieve any community solar company from any of its duties and obligations under the laws of the state of Washington. The commission retains the authority to impose additional or different requirements on any community solar company in appropriate circumstances, consistent with the requirements of applicable law.

#### NEW SECTION

**WAC 480-103-002 Definitions.** (1) "Administrator" means a person or entity that organizes and administers a community solar project on behalf of a community solar company. The administrator may be responsible for applying for the renewable energy system incentive on behalf of the

system's owners and for performing other administrative tasks including, but not limited to:

- (a) Receiving renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with WSU and the commission about any changes in program participants.

(2) "Applicant" means any person, corporation, partnership, government agency, or other entity that applies for service from a community solar company.

(3) "Business day" means a day when the commission's offices are open as provided in WAC 480-07-120.

(4) "Commission" means the Washington utilities and transportation commission.

(5) "Customer" means any person, corporation, partnership, government agency, or other entity that has applied for, or is currently receiving, utility service within the state of Washington.

(6) "Community solar company" means a person, firm, or corporation, other than an electric utility or community solar cooperative, that owns a community solar project within the state of Washington and provides community solar project services to project participants.

(7) "Community solar project" means a solar energy system within the state of Washington that has a direct current nameplate generating capacity (i.e., maximum rated output) that is no larger than one thousand kilowatts.

(8) "Community solar project services" means the provision of electricity generated by a community solar project, or the provision of the financial benefits associated with electricity generated by a community solar project, to multiple project participants, and may include other services associated with the use of the community solar project such as system monitoring and maintenance, warranty provisions, performance guarantees, and customer service.

(9) "Deposit" means any moneys provided to the community solar company as an advance toward a purchase of an interest in a community solar project or moneys provided to the company as a guarantee of future payments due to the company.

(10) "Electric utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(11) "Private consumer information" means the name, street address, email address, telephone number, and any other personally identifying information of a customer, project participant, or applicant, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products the customer, project participant, or applicant obtains or requests from a community solar company.

(12) "Project participant" means a customer who enters into a lease, power purchase agreement, loan, or other financial agreement with a community solar company to obtain a beneficial interest in, other than direct ownership of, a community solar project.

(13) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(14) "WSU" means the Washington State University energy program.

#### NEW SECTION

**WAC 480-103-007 Administrators.** A community solar company may contract with or otherwise retain one or more administrators to perform tasks on the company's behalf that are subject to the rules under this chapter. If an administrator engages in conduct that violates any federal, state, or local law or regulation, or any commission order while acting on behalf of the community solar company, the company is subject to commission enforcement actions as if the company itself engaged in that conduct. The community solar company is responsible for maintaining measures designed to prevent and detect an administrator's violation of statutes or rules within the commission's authority to enforce. Upon commission request, a community solar company must make available records regarding the tasks an administrator performs on the company's behalf. Such records must fully enable the commission to audit, investigate, and determine the company's compliance with applicable law.

### PART II

#### **REPORTING AND REGISTRATION REQUIREMENTS, REGULATORY AND REGISTRATION FEES**

#### NEW SECTION

**WAC 480-103-010 Registration and regulatory fees.** Community solar companies must pay the following fees:

Initial registration: \$450  
Renewal registration: \$350  
Amended registration: \$150

Regulatory fee: See WAC 480-103-030(2), minimum \$20

#### NEW SECTION

**WAC 480-103-020 Registration as a community solar company.** No person may engage in business as a community solar company in Washington without having registered with the commission. Engaging in business as a community solar company includes advertising, soliciting, offering, providing, or entering into an agreement to provide community solar project services.

(1) **Applications.** Community solar companies must submit applications to the commission for the following purposes:

- (a) To initially register as a community solar company prior to engaging in business;
- (b) To annually renew the company's registration as a community solar company; or
- (c) To amend the company's existing registration to reflect any material change to the company's registered operations.

(2) **Application forms.** Community solar companies must submit the appropriate application on the form furnished by the commission and must include all information,

documentation, and support the commission requires in the form or the form's instructions. The commission may refuse to accept an incomplete application. The commission's acceptance of an application does not indicate the commission's approval of the application, nor is the commission precluded from finding that the information the company provides in the application is insufficient.

(3) **Initial registration.** A community solar company must provide the following in its application for initial registration:

- (a) The company's name and address;
- (b) The name and address of the company's registered agent, if any;
- (c) The name and address of all administrators the company currently has contracted with or retained to perform tasks on its behalf;
- (d) The name, address, and title of each officer or director of the company;
- (e) The company's most current balance sheet;
- (f) The company's latest annual report, if any;
- (g) A description of the services the company offers or intends to offer, including financing models;
- (h) A description of the technical administrative competency of the principal personnel that the company will use to provide the proposed services;
- (i) Evidence of adequate financial resources to provide the proposed services;
- (j) Disclosure of any pending litigation against the company;
- (k) The company's active electrical license or registration number issued by the Washington department of labor and industries, if applicable;
- (l) Acknowledgment of the company's responsibilities under WAC 480-103-135;
- (m) Evidence of an escrow or trust account where the company will hold deposits collected from customers, project participants, or applicants;
- (n) Evidence of the resolution of any outstanding complaints against the company on file with the commission; and
- (o) The initial registration fee specified in WAC 480-103-010.

(4) **Renewal registration.** Each community solar company must file an application to renew its registration by May 1st of each year after the calendar year in which the commission initially registered the company. The company must provide the following in its application to renew its registration:

- (a) The company's name and address;
- (b) The name and address of the company's registered agent, if any;
- (c) The name and address of all administrators the company currently has contracted with or retained to perform tasks on its behalf;
- (d) Any update to the name, address, and title of each officer or director of the company;
- (e) The company's most current balance sheet;
- (f) Any update to the description of the services the community solar company offers or intends to offer, including financing models, a description of the technical administrative competency of the personnel the company will use to

provide the updated services, and evidence of adequate financial resources to provide the updated services;

(g) Disclosure of any pending litigation against the company;

(h) Any update to the company's active electrical license or registration number issued by the Washington department of labor and industries, if applicable;

(i) Acknowledgment of the company's responsibilities under WAC 480-103-135;

(j) Evidence of an escrow or trust account where the company will hold deposits collected from customers, project participants, or applicants;

(k) The registration renewal fee required by WAC 480-103-010; and

(l) The company's annual report and regulatory fee as required under WAC 480-103-030.

(5) **Amended registration.** A registered community solar company must immediately notify the commission of any material changes to the company's business operations including, but not necessarily limited to, changes to the company's name, services it provides, ownership, or business structure. The company must file an application to amend its existing registration to reflect any such changes.

(6) **Additional information.** The commission may require a community solar company to provide information in addition to the information specified in this rule if necessary to determine whether the company and its proposed or actual operations comply with applicable law and are consistent with the public interest.

(7) **Commission action.** The commission will take one of the following actions within thirty days of receiving a complete application:

(a) Grant the application by letter or order, with or without a hearing;

(b) Issue a notice of hearing to resolve issues of fact or law; or

(c) Deny the application. The commission will not deny an application without a hearing. The commission may deny an application on the following nonexclusive grounds:

(i) Failure to meet the requirements of this rule;

(ii) Failure to provide sufficient protection for deposits the company collects from customers, program participants, or applicants;

(iii) Lack of adequate financial resources to provide service;

(iv) Lack of adequate technical administrative competency to provide service; or

(v) Violations of applicable federal or state law as provided in WAC 480-103-040.

#### NEW SECTION

**WAC 480-103-030 Annual reports and payment of regulatory fees. (1) Annual reports.**

(a) *Community solar companies.* Each community solar company must file a report on or before May 1st each year on the community solar company's operations within the state of Washington for the prior calendar year. The company must submit the annual report on the form furnished by the commission and must include all information, documentation,

and support the commission requires in the form or the form's instructions. The report must include:

(i) A statement under oath of the community solar company's gross operating revenue from intrastate operations during the prior calendar year; and

(ii) A list identifying all of the company's community solar projects and related programs and services within the state of Washington.

(b) *Investor-owned utilities.* On or before May 1st each year, each investor-owned utility operating a community solar project must file a list identifying all of the utility's community solar projects and related programs and services within the state of Washington.

(2) **Regulatory fee.** On or before May 1st each year, each community solar company must pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue the company generated during the previous calendar year, plus two-tenths of one percent of any such gross intrastate operating revenue in excess of fifty thousand dollars. The minimum regulatory fee a community solar company must pay is twenty dollars.

(3) **Enforcement.** The commission will enforce a community solar company's obligations under this rule, including assessment of penalties, as authorized in WAC 480-07-917.

#### NEW SECTION

**WAC 480-103-040 Suspension and cancellation of a registration. (1) Voluntary cancellation.** A community solar company may petition the commission to cancel the company's registration. The company must notify its project participants of its intent to file any such petition no less than fifteen days in advance of making the filing and when making the filing with the commission. The commission may grant the petition without a hearing.

(2) **Suspension.** The commission may suspend a community solar company's registration for cause. The commission will lift the suspension if the company remedies the cause within the time the commission allows. Cause for suspension includes, but is not limited to:

(a) Failure to provide information the commission needs to perform its regulatory functions including, but not limited to, failure to respond to complaints the commission has received and referred to the company for resolution;

(b) Failure to maintain an adequate escrow or trust account where deposits collected from project participants are or will be held;

(c) Violation of commission rules or orders or violations of the laws or regulations of a state or the United States as found by a court or governmental agency.

(3) **Involuntary cancellation.** The commission may cancel a community solar company's registration for cause. The commission need not suspend a company's registration prior to canceling it. Cause for cancellation includes, but is not limited to:

(a) Failure to file an annual report or pay required regulatory fees;

(b) Failure to correct the conditions leading to any suspension within the time defined in the letter or order of suspension;

(c) Failure to provide information as required by the commission or submitting false, misleading, incomplete, or inaccurate information;

(d) Failure to maintain an adequate escrow or trust account where deposits collected from project participants are or will be held;

(e) Failure to resolve complaints by any interested party, or upon the commission's own motion, after notice and opportunity for hearing; or

(f) Violation of commission rules or orders or violations of the laws or regulations of a state or the United States as found by a court or governmental agency.

(4) **Notice to company.** The commission will issue a notice of its intent to suspend or cancel a community solar company's registration. The notice will provide the company with an opportunity to respond to the commission's proposed action including, but not limited to, requesting a hearing. The commission will conduct an adjudicative proceeding in response to such a request only if the company raises genuine issues of material fact or law that require resolution through an evidentiary proceeding.

(5) **Notice to project participants.** A community solar company must notify its project participants of any pending commission action to suspend or cancel the company's registration within five days of the company receiving notice of such action from the commission.

(6) **Effect of suspension or cancellation.** A community solar company may not engage in business as a community solar company if its registration is suspended or canceled including, but not limited to, collecting any incentive payments described under chapter 82.16 RCW. Suspension or cancellation, however, will not relieve a community solar company of its contractual obligations to its program participants.

(7) **Reregistration.** A community solar company whose registration has been canceled may apply for a new registration under WAC 480-103-020 if the company has corrected the causes of cancellation.

#### NEW SECTION

**WAC 480-103-050 Disconnection of service.** An electric utility is not liable for incentive payments to a community solar company's project participants if the utility has disconnected utility service to the company due to the company's violation of a customer service agreement, such as nonpayment of the company's utility bill, or the company's violation of the interconnection agreement between the company and the utility.

### PART III

#### CONSUMER RULES

#### NEW SECTION

**WAC 480-103-100 Information to customers, project participants, and applicants.** (1) **Transparent administra-**

**tion.** A community solar company must administer its community solar projects in a transparent manner that allows for fair and nondiscriminatory opportunities for customers, project participants, and applicants to participate.

(2) **Cost recovery and notice.** A community solar company may establish a reasonable fee to cover the costs it incurs to organize and administer its community solar projects. Prior to a customer making the commitment to participate in the project, the company must give clear and conspicuous notice to the customer of the portion of the incentive payment that the company will use for this purpose.

(3) **Service changes.** A community solar company must promptly notify all affected project participants of any substantial change to the community solar project service the company provides. The community solar company must bear all costs in connection with making changes to its own equipment.

(4) **Information on rates, terms, and conditions.** A community solar company must make information regarding its rates, rules, and regulations available at each of its listed business offices and on its web site.

(5) **Information a company must maintain.** A community solar company must maintain and update annually through June 30, 2030, the following information for each community solar project it operates or administers:

(a) Ownership information;

(b) Contact information for any administrator of the community solar project;

(c) Contact information for persons who will respond to technical management questions;

(d) Business address;

(e) Email address at which the company will receive communications from the commission; and

(f) Project design details including, but not limited to, project location, output capacity, equipment list, and interconnection information, and participation information, including rates, fees, terms, and conditions.

(6) **Toll-free number and email address.** The community solar company must have a toll-free telephone number that can accept calls during business hours and an email address to receive inquiries relating to services and rates, to accept and process orders, to explain charges on customer bills, to adjust charges made in error, and to respond to customer and project participant inquiries and complaints. Callers to the telephone number must be able to leave a detailed message in the event that a person does not answer. The company must return all unanswered calls and respond to all emails within one business day.

(7) **Commission publication.** A community solar company must provide each customer or potential project participant with a printed or electronic copy of the commission publication, *Consumer Guide to Community Solar in Washington State* at the time the company solicits participation in its community solar project. The company can obtain the publication from the commission's web site or by contacting the commission, and the company is responsible for making the requisite copies. The commission prescribes the language contained in the publication, and the company may not change that language.

(8) **Disclosure to applicants.** A community solar company must provide to each applicant relevant rate information and a disclosure form that explains the rights and responsibilities of a project participant. The disclosure form must include all material terms and conditions of participation in the company's community solar project including, but not limited to, the following:

(a) The company's regular business hours, mailing address, email address, web site, and toll-free telephone number;

(b) Information about any administrator of the community solar project;

(c) Contact information for questions and complaints;

(d) All financial rights and obligations of a project participant related to the project;

(e) The company's processes for establishing credit, making deposits, and handling delinquent accounts and cancellation;

(f) The company's dispute resolution process and the commission's complaint procedures the project participant may use if the company's process does not resolve the dispute;

(g) The company's billing and payment procedures;

(h) All recurring and nonrecurring charges;

(i) The terms under which the project's share of any incentive payment will be calculated by WSU over the life of the project;

(j) Current project production projections and the methodology used to develop the projections;

(k) Any compensation the company will pay to the participant in the event of project underperformance;

(l) The disposition of the renewable energy credits;

(m) Terms governing the portability or transferability of the project participant's interest in the project, including any potential costs associated with such a transfer; and

(n) Any other material terms and conditions of the services the company provides.

(9) **Annual notice to project participants.** At least once each year, a community solar company must directly advise each of its project participants how to obtain:

(a) A copy of the information, forms, and disclosures described in this section;

(b) The participant's current production projection information;

(c) The current total value of the participant's share of the project;

(d) A copy of the commission's community solar rules under this chapter; and

(e) A copy of the company's current rates, terms, and conditions for the project.

(10) **Copies to the commission.** The community solar company must provide the commission with current copies of all of the company's disclosure forms, pamphlets, brochures, and bill inserts prior to delivering such materials to customers, project participants, or applicants.

(11) **Unique materials.** A community solar company may not use the name, bills, marketing materials, or consumer education materials of another community solar company.

#### NEW SECTION

**WAC 480-103-105 Services and charges.** (1) **Services and charges limited.** A community solar company may offer and provide only the community solar project services the commission has registered the company to provide and may provide a project participant only the services the participant has agreed in writing to receive at the rates or charges the participant has agreed to pay.

(2) **No new charges without consent.** A community solar company may not charge a project participant any rate or fee for a new service or service option or impose a new or additional rate or fee for an existing service or service option without the participant's prior consent.

#### NEW SECTION

**WAC 480-103-110 Community solar company personnel.** (1) **General standards.** Each community solar company must develop standards and qualifications for the persons it uses to perform the tasks required to administer and operate its community solar projects and provide its project services. A company may not hire, engage, or otherwise use a person to perform such tasks who fails to meet its standards.

(2) **Door-to-door activity personnel.** A community solar company may not permit a person to conduct door-to-door activities on its behalf until it has obtained and reviewed the person's criminal history record.

(a) A company must complete a criminal background check for every person that will conduct door-to-door activities on its behalf;

(b) The company must keep evidence that it has completed a criminal background check for every person the company uses for door-to-door activities for as long as that person performs such activities and for seven years thereafter;

(c) No company may use a person for door-to-door activities who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, or false statements, within five years of the date the company intends to use that person; and

(d) When a community solar company contracts with an independent contractor or vendor to perform door-to-door activities, the company must document that the contractor or vendor has performed criminal background investigations on its personnel in accordance with the requirements in this rule. A company may satisfy this obligation by obtaining from the independent contractor or vendor a written statement affirming that the contractor or vendor performed the requisite criminal background checks and that all personnel who will be performing door-to-door activities on behalf of the company satisfy the requirements in this section. The company must periodically audit whether the independent contractor or vendor has completed the background checks in accordance with this section.

(3) **Requirements for personnel engaged in door-to-door activities or public events.**

(a) *Training.* A community solar company must establish requirements and training for its employees and persons conducting door-to-door activities or appearing at public events on behalf of the company and must retain documenta-

tion of the completion of training as required under WAC 480-103-150.

(b) *Identification.* A community solar company must issue identification badges to be worn and prominently displayed by persons conducting door-to-door activities or appearing at public events on behalf of the company. The badge must:

- (i) Accurately identify the community solar company, its trade name, and its logo;
- (ii) Display the person's photograph;
- (iii) Display the person's full name; and
- (iv) Display a customer service phone number for the community solar company.

(c) *Disclosures on initial contact.* Upon first contact with a customer, a person conducting door-to-door activities or appearing at a public event on behalf of a community solar company must:

- (i) Identify the community solar company the person represents; and
- (ii) State that the person is not working for the customer's local utility or any other community solar company.

(d) *Branding.* When conducting door-to-door activities or appearing at public events on behalf of a community solar company, a person may not display branding elements, such as a logo, that suggests a relationship that does not exist between that person and any utility, government agency, or other community solar company.

(4) **No requirement to choose a company.** A community solar company or a person conducting door-to-door activities or appearing at a public event on behalf of a community solar company may not say or suggest to a customer that the customer is required to choose a community solar company.

#### NEW SECTION

**WAC 480-103-115 Application for participation in a community solar project.** (1) **No subscription without consent.** No community solar company may subscribe any person to a community solar energy generation system without that person's prior written consent.

(2) **Identification of application form.** Application forms to participate in a community solar project must be clearly identified as a contract for such participation.

(3) **Permissible applicant information requirements.** If applicable, a community solar company may require the following information from an applicant:

(a) The applicant's name, street address, email address, telephone number, and any alternative contact telephone number;

(b) Proof of identification; provided that the community solar company must allow the applicant to choose one form of identification from a list provided by the company of at least five sources of identification, which must include an option for a current driver's license or other state-issued photographic identification card; and

(c) Additional information the community solar company reasonably needs to provide or bill for service.

#### NEW SECTION

**WAC 480-103-120 Deposits.** (1) **Escrow or trust account.** Community solar companies that collect deposits from customers, project participants, or applicants must maintain an escrow or trust account where the company will hold the deposits it collects.

(2) **Interest on deposits.** Community solar companies that collect deposits from customers, project participants, or applicants must pay interest on those deposits from the date the company collects the deposit to the date the company refunds or applies the deposit directly to the customer, project participant, or applicant's account. For each calendar year, the company will pay interest at the rate for the one-year Treasury Constant Maturity calculated by the U.S. Treasury, as published in the *Federal Reserve's Statistical Release H.15* on January 15th of that year, or if January 15th is not a business day, the rate posted on the following business day.

(3) **Refund of deposits.** A community solar company must refund deposits plus interest, less any amounts due from the project participant, when:

(a) The participant's deposits plus interest are not applied toward the participant's account or portion of the community solar project; and

(b) The participant terminates his or her participation in the community solar project; or

(c) The company terminates the participant's participation; or

(d) The community solar project ceases operation.

(4) **Manner of refund.** A community solar company must refund any deposits plus interest in the manner indicated by the project participant at the time of deposit, or as modified by the project participant on a later date, using one of the following methods:

(a) A check issued and mailed to the project participant no later than fifteen days following termination of the participant's participation in the project or termination of the project; or

(b) Another form of payment mutually agreed upon by the company and the participant.

#### NEW SECTION

**WAC 480-103-125 Transfer of project participation.** A community solar company must allow project participants to sell or otherwise transfer a portion or all of their interest in a community solar project, subject to the following conditions:

(1) Neither the portion transferred nor any portion retained by the project participant is smaller than the minimum participation size specified in the contract between the participant and the company;

(2) If the transfer is to one or more persons, those individuals must meet the company's participation requirements;

(3) The company may require the program participant to obtain company approval of any transfer to another person, which may not be unreasonably withheld; and

(4) If a program participant is unable or elects not to transfer the participant's interest to another person, the company must allow a transfer back to the company.

NEW SECTION

**WAC 480-103-130 Disclosure of private consumer information.** (1) **Consent required.** A community solar company may not disclose private consumer information to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer, project participant, or applicant who does not already subscribe to that service or product without the person's prior written or electronic consent. The community solar company must obtain such consent for each instance of disclosure of the customer, project participant, or applicant's private consumer information.

(2) **Documentation of consent.** The community solar company must retain documentation of each consent for disclosure of private consumer information, which must include the following information:

(a) Confirmation of consent for the disclosure of private consumer information;

(b) The date of the consent and a list of the affiliates, subsidiaries, or third parties to which the customer, project participant, or applicant authorized disclosure of private consumer information; and

(c) Confirmation that the name, service address, and account number, if applicable, exactly match the community solar company's record for the customer, project participant, or applicant who provided the consent.

(3) **Inapplicability.** This section does not prevent a community solar company from undertaking any of the following:

(a) Disclosing the essential terms and conditions of special contracts as provided in WAC 480-80-143;

(b) Distributing any marketing information in a project participant's billing package; or

(c) Collecting and releasing information in aggregate form related to services and products that customers, project participants, or applicants obtain or request as long as the aggregated information does not enable any specific customer, project participant, or applicant to be identified.

NEW SECTION

**WAC 480-103-135 Complaints and disputes.** (1) **Complaints to the company.** A community solar company must establish procedures for resolving complaints it receives from a customer, project participant, or applicant. At a minimum, the company must take the following actions when it receives such a complaint:

(a) Acknowledge the company's receipt of the complaint;

(b) Upon request, identify the company representative the complainant can contact concerning the complaint;

(c) Investigate the complaint promptly as required by the particular case;

(d) Report the results of the investigation to the complainant;

(e) Take corrective action, if warranted, as soon as practicable under the circumstances;

(f) Inform the complainant of the right to escalate the complaint to a supervisor at the company if the complainant

is dissatisfied with the results, decision, or any corrective action the company has taken; and

(g) Inform the complainant, if still dissatisfied after speaking with a supervisor, of the commission's address and toll-free telephone number and of the complainant's right to file a complaint with the commission.

(2) **Complaints to the commission.** Customers, project participants, or applicants should attempt to resolve their disputes with a community solar company prior to filing a complaint with the commission. Customers, project participants, applicants, or their representatives may file the following types of complaints:

(a) *Informal complaints.* A person may make an informal complaint against the company as provided in WAC 480-07-910. The commission will investigate all such complaints and will work with the company and the complainant to resolve the dispute. As part of that investigation, the company must:

(i) Conduct its own investigation of the complaint and report the results to the commission within five business days or by a date the commission specifies;

(ii) Keep the commission informed of progress the company and the complainant have made toward resolving the complaint; and

(iii) Respond to any commission request for additional information within five business days of the request or by a date the commission specifies.

(b) *Formal complaints.* A person may file a formal complaint against the company as provided in WAC 480-07-370. Upon receipt of a formal complaint, the commission will determine the appropriate action to take including, but not limited to, whether to initiate an adjudication to resolve the dispute.

(3) **Records of complaints.** Each community solar company must keep a record of all complaints it receives, either directly or upon referral from the commission, for at least seven years and, upon request, make those records readily available for commission review. The records for each complaint must contain:

(a) The complainant's name and address;

(b) The date and nature of the complaint;

(c) Any and all actions the company took in response to the complaint;

(d) The final disposition of the complaint; and

(e) All company documents regarding the complaint.

(4) **Actions pending complaint resolution.** The community solar company may not terminate a project participant's contract while the participant is pursuing any remedy or appeal provided by commission rule or while engaged in the dispute resolution process required by this section. Pending resolution of any complaint, moneys not in dispute must be paid when due, and the company must correct any conditions posing a danger to health, safety, or property. The company must inform the complainant of these requirements when referring the complainant to a company supervisor or to the commission.

NEW SECTION

**WAC 480-103-140 Electronic information.** (1) **Consent required.** A community solar company may provide in

electronic form, rather than paper, information a statute, rule, or commission order requires the company to provide to a customer, project participant, or applicant, only with the prior written or electronic consent of the customer, project participant, or applicant. The electronic communication providing the information must provide a link to that information or otherwise sufficiently advise the customer, project participant, or applicant of how to access the information electronically.

(2) **Format of electronic communications.** All information a community solar company provides in electronic form must meet the requirements for format and any other requirements specified in this chapter.

(3) **Obtaining and documenting consent.** The community solar company must obtain the consent required in this section directly from the customer, project participant, or applicant for each service the company provides to the customer, project participant, or applicant. The company also must comply with the following requirements:

(a) *Content.* At a minimum, the consent must include the following:

(i) The name, address, and account number, if applicable, that exactly matches the community solar company record for such person or account;

(ii) The customer, project participant, or applicant's affirmative decision to receive electronic information;

(iii) Confirmation of the customer, program participant, or applicant's understanding that the community solar company will provide, upon request but subject to the limitations in this section, a paper copy of any document the company sends electronically at no additional charge;

(iv) Confirmation of the customer, project participant, or applicant's understanding that the person may opt out of receiving information electronically at any time and revert to receiving paper documents through the mail at no additional charge;

(v) Confirmation of the customer, project participant, or applicant's understanding that it is that person's responsibility to notify the community solar company of any change to the person's email or other electronic address; and

(vi) Confirmation of the customer, program participant, or applicant's understanding that, in addition to the paperless account statements, the person may receive all notices regarding service in electronic form including, but not limited to, notices of the community solar company's intent to increase rates and make changes in service.

(b) *Consent disclosures.* All consent disclosures must be prominent on the community solar company's written or electronic form, web page, or other electronic format and must be clearly distinguishable from any other content in the document, screen, or web page.

(i) Only information specified in this section may be combined with the consent disclosures, including community solar company contact information.

(ii) The consent disclosures must not have consent boxes or spaces prefilled. The customer, project participant, or applicant must personally check each box or space to give the person's consent to receive electronic communication regarding one or more services.

(c) *Options.* The consent disclosures on the document, screen, or web page may provide for a single consent for all communications related to a specific service or may offer separate, individual opportunities to consent to the following aspects of a service:

(i) Paperless billing;

(ii) Automatic payments including, but not limited to, one-time payments; or

(iii) Payment plans.

(d) *Records.* The community solar company must retain a record of each customer, project participant, or applicant's consent to receive electronic communications for each service the company provides.

(e) *Availability.* The community solar company must make its records of the customer, program participant, or applicant's consent available to that person and to the commission upon request and at no charge.

(4) **Documents requiring paper delivery.** A community solar company must deliver paper copies of the following documents to project participants no less than fifteen days in advance of the noticed event:

(a) Notices of termination or suspension of any community solar project in which the participant has an interest or of community solar project services the participant receives; and

(b) Notices of the company's involuntary termination of a participant's interest in a community solar project.

(5) **Limit on changes to information format.**

(a) A community solar company is not obligated to provide both paper documents and electronic information to a customer, project participant, or applicant on a continuous basis.

(b) A community solar company may limit a customer, project participant, or applicant who has consented to electronic communications to three requests for paper documents in a twelve-month period.

(c) A community solar company may require that a customer, project participant, or applicant who requests an electronic statement also receive all statement inserts electronically.

(d) If a customer, project participant, or applicant is unable to properly receive, view, or understand electronic information the community solar company provides, the company may refuse to provide that information in electronic form to that person.

(6) **Undeliverable electronic information.**

(a) If the community solar company receives a message or otherwise becomes aware that any electronic information it has sent to a customer, project participant, or applicant is undeliverable or did not reach the intended recipient, the company must take one or both of the following actions by the end of the next business day to ascertain and resolve the issue:

(i) Resend the electronic information to the electronic address the customer, program participant, or applicant provided to the company; or

(ii) Contact the customer, project participant, or applicant by telephone.

(b) If any electronic information remains undeliverable after the community solar company takes one or both of the

actions required in (a) of this subsection, the company must send the information by mail to the customer, project participant, or applicant. In the mailing, the company must explain that the company is unable to deliver information to the electronic address in its records and that the company will only send paper copies of future information to the customer, project participant, or applicant until the person provides the company with a functioning electronic address.

#### NEW SECTION

**WAC 480-103-145 Meter tests.** (1) **Testing frequency.** A community solar company must test and report to project participants the accuracy of each of its community solar project's meters every twelve months.

(2) **Dispute resolution.** If a project participant disputes any meter test result, the company or the customer may file a complaint with the commission.

(a) When the commission has notified the company that the commission has received a complaint regarding a meter test result, the company may not alter the meter in any manner unless authorized by the commission. The commission may consider any alteration to the meter in violation of this requirement as support for the complaint.

(b) The commission may require the company to perform an additional meter test and report the test results to the commission within ten business days.

#### PART IV

### RECORDS AND REPORTING RULES

#### NEW SECTION

**WAC 480-103-150 Retention and preservation of records and reports.** Community solar companies receiving incentive payments must maintain and preserve, for a period of seven years, suitable records as may be necessary to determine the amount of incentive the company applied for and received. Such records must be open for examination at any time upon notice by the utility that made the payment and by the commission. The commission otherwise adopts the standards in the publication, *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies*, published by the National Association of Regulatory Utility Commissioners, as the standards for records retention for community solar companies as described in WAC 480-103-999.

#### NEW SECTION

**WAC 480-103-155 Reports of accidents.** (1) **Initial notification.** Each community solar company must notify the commission orally or by email of any accident that results in death or serious injury to any person occurring in connection with a company's community solar project or through contact with its facilities no later than the second business day following the company's discovery of the accident.

(2) **Follow-up report.** The community solar company must submit a follow-up written report of the accident to the

commission within fifteen business days of the initial notification. The report must include, at a minimum:

- (a) The time and place of the accident;
- (b) A brief description of how the accident occurred;
- (c) Whether the accident resulted in a fatality;
- (d) The name and address of the persons injured; and
- (e) A brief description of the company's response to the accident including, but not limited to, any medical treatment that was provided to the injured persons.

#### PART V

### ADOPTION BY REFERENCE

#### NEW SECTION

**WAC 480-103-999 Adoption by reference.** In this chapter, the commission adopts by reference the regulations and standards in *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies*, published by the National Association of Regulatory Utility Commissioners (NARUC) as the standards for records retention for community solar companies unless otherwise specified in these rules. The commission adopts the version of this document in effect in 2007. This is a copyrighted publication, and copies are available from NARUC in Washington, D.C., or at the NARUC publications store online at <http://www.naruc.org/store>. The publication is also available for inspection at the commission's offices.

#### WSR 18-17-136

#### PROPOSED RULES

#### SHORELINE COMMUNITY COLLEGE

[Filed August 20, 2018, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-124.

Title of Rule and Other Identifying Information: Chapter 132G-136 WAC, Use of college facilities (repealed) and chapter 132G-137 WAC, Use of college facilities (created).

Hearing Location(s): On October 4, 2018, at 10:00 a.m., at Shoreline Community College, PUB Quiet Dining Room.

Date of Intended Adoption: October 24, 2018.

Submit Written Comments to: Veronica Zura, 16101 Greenwood Avenue North, Shoreline, WA 98133, email [sccrulemaking@shoreline.edu](mailto:sccrulemaking@shoreline.edu), fax 206-546-5850, by October 4, 2018.

Assistance for Persons with Disabilities: Contact services for students with disabilities, phone 206-546-4545, fax 206-533-5109, TTY 206-546-4520, email [ssd@shoreline.edu](mailto:ssd@shoreline.edu), by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college is proposing the repeal of chapter 132G-136 WAC and the creation of chapter 132G-137 WAC to provide updated and clarifying language regarding the use of facilities at Shoreline Community College. The updated code incorporates new model language that implements best practices for the smooth opera-

tion of Shoreline Community College's buildings and grounds in support of our primary mission as an educational facility.

Reasons Supporting Proposal: Current language reflected in chapter 132G-136 WAC, Use of facilities, does not effectively clarify the rules for appropriate use for Shoreline's buildings and grounds. The updated language found in chapter 132G-137 WAC specifically identifies and provides direction for a variety of potential requests related to the use of college facilities.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Trippel, Administration Building 1000, Room 1016, 206-546-4672.

A school district fiscal impact statement is not required under RCW 28A.305.135. A statement is not required for this college rule under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to this college 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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

August 20, 2018  
Veronica Zura  
Executive Director  
Human Resources

## Chapter 132G-137 WAC

### USE OF COLLEGE FACILITIES

#### NEW SECTION

**WAC 132G-137-010 Use of college facilities.** Shoreline Community College is a learning organization within higher education provided and maintained by the people of the state. The college's buildings, properties, and facilities shall be reserved at all times for activities related directly to its cultural, educational, or recreational pursuits.

#### NEW SECTION

**WAC 132G-137-020 Limitation of use to school activities.** The college buildings, properties, and facilities, including those assigned to student programs, may be used only for:

(1) The regularly established teaching, research, or public service activities of the college and its departments or related agencies.

(2) Cultural, educational, or recreational activities of the students or of the employees.

(3) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the

advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(4) Cultural or professional events open to the public by:

(a) K-12 and universities;

(b) State or federal agencies;

(c) Charitable agencies; or

(d) Civic or community organizations whose activities are of a character appropriate to the college.

(5) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the campus community. In conformance with state guidelines, the appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration or the board of trustees, whether implicit or explicit, of the speaker's views.

(6) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements must be made through the designated administrative officer. Allocation of space shall be made in accordance with published college regulations and on the basis of time, space availability, priority of request and the demonstrated needs of individuals or groups.

(7) Use of space shall not interfere with regularly scheduled classes or activities. Any damage to the assigned facilities may result in limitation of future allocation of space to the offending parties. Charges may be imposed for any damage, or for unusual costs associated with the use of the facility. Individuals or groups requesting space will be required to state in advance the general purpose of any meeting. If any charge or collection of funds is contemplated, advance permission from the party giving authority for space allocations will be required.

#### NEW SECTION

**WAC 132G-137-030 Limitation of use.** (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) College facilities may be rented to private or commercial organizations or associations but shall not be rented to individuals or groups conducting programs for private gain, with the exception of programs which support or promote the educational interests of the college.

(3) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college.

(4) In compliance with the college's weapons policy, the possession, carrying, or display of any weapon by any person, except a commissioned law enforcement officer, is prohibited on college property, in academic buildings, adminis-

trative office buildings, recreational facilities, dining facilities, child care facilities, or at any athletic, entertainment, or educational event.

(a) Any individuals or groups, including those visiting or conducting business with Shoreline Community College, found in possession of a firearm or other weapon knowingly or under circumstances in which the individual should have known that they were in possession of a weapon or firearm within college property or while otherwise fulfilling job or academic responsibilities may be banned from the college for such time and extent as the college determines appropriate. Firearms or other weapons include, but are not limited to, the following:

(i) Any weapon or device from which a projectile or projectiles may be ejected by explosive, such as gunpowder;

(ii) Any simulated or actual firearm operated by any mechanism, gas, or compressed air;

(iii) Any knife with a blade exceeding three inches in length and/or which opens or is ejected open by an outward, downward thrust or movement, or spring;

(iv) Any device, instrument, or object that is used with intent to cause or negligently results in risk of injury or damage to any person or property. Individuals or groups will be directed and required to remove their weapons or themselves from the college property or premises, with all appropriate legal actions being taken upon failure to comply.

(b) Individuals with a valid Washington state concealed weapons permit must keep any firearm in their vehicle locked and concealed from view while parked on campus in accordance with RCW 9.41.050.

(c) The president or their designee may grant permission to bring a weapon elsewhere on campus upon a determination that the weapon is necessary for safety and security purposes. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

#### NEW SECTION

**WAC 132G-137-040 Administrative control.** The board hereby delegates to the president authority to set up administrative procedures for proper review of the use of college facilities; to establish, within the framework of these policies, regulations governing such use; and to establish rental schedules where appropriate.

#### NEW SECTION

**WAC 132G-137-050 Trespass.** (1) Individuals who are not students or employees and who violate the college's rules, or whose conduct threatens the safety or security of its students and employees will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or designee, to leave the college property. Such a request will be deemed to prohibit the entry of the college property, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and sub-

ject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community (students and employees) who do not comply with these regulations will be reported to the appropriate college office or outside agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the president or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the president or designee will be the final decision of the college and should be issued within five business days of receipt of the request to review the trespass notice.

#### NEW SECTION

**WAC 132G-137-060 Prohibited conduct at college facilities.** (1) State law relative to public institutions govern the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful narcotics or drugs, not medically prescribed, on college property or at college functions, is prohibited. Students, staff and faculty who are obviously under the influence of intoxicants, unlawful drugs, or narcotics while in college facilities shall be subject to disciplinary action.

(2) A lottery or any other form of gambling is prohibited at Shoreline Community College.

(3) The smoking or vaping of tobacco is restricted by college policy, laws and regulations of the fire marshal to designated smoking areas only. The vaping or smoking of marijuana or herbal or chemical products, and the use of smokeless or chewing tobacco is prohibited at all times on campus.

(4) Destruction of property is also prohibited by state law in reference to public institutions.

#### NEW SECTION

**WAC 132G-137-070 Control of pets in college facilities.** Pets on the grounds of Shoreline Community College shall be in the physical control of their owner in accordance with Shoreline municipal code title 6.30.050 (leash law) at all times. Animals, except for service animals, are prohibited from entering buildings operated by Shoreline Community College except by the express written permission of the president or designee.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-136-010 Rental of college facilities.

WAC 132G-136-020 Authorization for use of facilities.

WAC 132G-136-030 Trespass regulations.

WAC 132G-136-040 Collections.

|                  |   |
|------------------|---|
| WAC 132G-136-050 | Presentation of media, distribution of materials, and posting of signs. |
| WAC 132G-136-060 | Distribution of materials—Off-campus organizations and nonstudents.     |
| WAC 132G-136-070 | Student facilities or services—Appeals.                                 |
| WAC 132G-136-080 | College events—Admission restrictions.                                  |
| WAC 132G-136-090 | Physical education facility—Equipment stored in baskets.                |
| WAC 132G-136-100 | Physical education facility—Dress regulations.                          |
| WAC 132G-136-110 | Eye protection.   |
| WAC 132G-136-120 | Off-campus student-invited speakers—Preamble.                           |
| WAC 132G-136-130 | Off-campus student-invited speakers—Rules for scheduling.               |

students and nonstudents who wish to engage in protected speech on campus.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Trippel, Administration Building 1000, Room 1016, 206-546-4672.

A school district fiscal impact statement is not required under RCW 28A.305.135. A statement is not required for this college rule under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to this college 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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

August 20, 2018

Veronica Zura

Executive Director

Human Resources

### WSR 18-17-137

#### PROPOSED RULES

#### SHORELINE COMMUNITY COLLEGE

[Filed August 20, 2018, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-125.

Title of Rule and Other Identifying Information: Chapter 132G-142 WAC, Use of college facilities for expressive activities.

Hearing Location(s): On October 4, 2018, at 2:00 p.m., at Shoreline Community College, PUB Quiet Dining Room.

Date of Intended Adoption: October 24, 2018.

Submit Written Comments to: Veronica Zura, 16101 Greenwood Avenue North, Shoreline, WA 98133, email [sccrulemaking@shoreline.edu](mailto:sccrulemaking@shoreline.edu), fax 206-546-5850, by October 4, 2018.

Assistance for Persons with Disabilities: Contact services for students with disabilities, phone 206-546-4545, fax 206-533-5109, TTY 206-546-4520, email [ssd@shoreline.edu](mailto:ssd@shoreline.edu), by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college is proposing the creation of chapter 132G-142 WAC to provide clarifying language reflecting model code and best practices regarding the time, manner and place restrictions for expressive activities on campus covered under first amendment rights. This language is being created to ensure there are protections in place to eliminate disruption to the educational process.

Reasons Supporting Proposal: Creating this new rule provides formal clarification that the campus is a limited forum and further delineates the time, place and manner for

### Chapter 132G-142 WAC

#### USE OF COLLEGE FACILITIES FOR EXPRESSIVE ACTIVITIES

##### NEW SECTION

**WAC 132G-142-010 Definitions.** (1) "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots owned, leased or controlled by Shoreline Community College.

(2) "College group" means a group of individuals who currently are enrolled students or current employees of Shoreline Community College, or individuals who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(3) "Expressive activity" includes, but is not limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments or other types of assemblies to share information, perspectives or viewpoints.

(4) "Noncollege group" means individuals or groups who currently are not enrolled students or current employees of Shoreline Community College and who are not officially affiliated or associated with, or invited guests of a recognized student organization or employee group, or with the administration of the college.

(5) "Public forum areas" means those areas of campus that the college has chosen to be open as places where non-college groups may assemble for expressive activities protected by the first amendment, subject to reasonable time, place, or manner provisions.

(6) "Recognized organization" includes student clubs, college councils or committees, and other groups designated by policy or approved by college leadership.

(7) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate a college individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

#### NEW SECTION

**WAC 132G-142-020 Statement of purpose.** Shoreline Community College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals the right to an unlimited range to engage in activities which limits, interferes with, or otherwise disrupts the normal activities to which the college's facilities and grounds are dedicated. Accordingly, the college designates the common grounds and outdoor areas of the college as a limited public forum subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are seeking to use the campus for purposes of expressive activity. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college campus is open to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process. The college has designated certain facilities as public use areas to noncollege groups as set forth herein.

#### NEW SECTION

**WAC 132G-142-030 Use of facilities.** (1) Subject to the regulations and requirements of this section, groups may use the campus limited forums for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) The activity must not substantially or materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees, or invitees to the college.

(3) Any sound amplification may only be at a volume which does not disrupt or disturb the normal use of class-

rooms, offices, laboratories, or any previously scheduled college activity.

(4) Groups are encouraged to notify the safety and security department no later than twenty-four hours in advance of an activity. However, unscheduled activities are permitted so long as the activity does not materially disrupt any other function occurring at the college.

(5) All sites used for expressive activities shall be cleaned up and left in their original condition by the participants or group, and will be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization or individuals for the costs of extraordinary cleanup or for the repair of damaged property.

(6) All fire, safety, sanitation or special regulations specified for activities under this section are to be obeyed. The college cannot and will not provide utility connections or hook-ups for the purposes of expressive activity conducted pursuant to this section.

(7) There shall be no camping on college facilities or grounds between the hours of 10:00 p.m. and 5:00 a.m. without express permission of the president or designee. Camping is defined to include sleeping, carrying on cooking activities, storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(8) The activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic, or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees to the college.

(9) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or officially chartered student club.

(10) The activity must be conducted in accordance with any other applicable college policies and rules, regulations, local ordinances, and state or federal laws.

#### NEW SECTION

**WAC 132G-142-040 Additional requirements for noncollege groups.** (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. When renting college facilities, an individual or organization may be required to post a bond or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage. Noncollege groups may otherwise use college facilities for expressive activity as identified in this section.

(2) The college designates its common grounds and outdoor spaces as the sole limited public forum area(s) for use by

noncollege groups for expressive activities on campus. The public use areas may be scheduled. Scheduled groups have priority of use over unscheduled groups. Nothing in these rules prohibits noncollege groups from engaging in expressive activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups that seek to engage in expressive activity in the designated public forum areas are encouraged to provide notice to the safety and security department no later than twenty-four hours prior to the event, along with the following information solely to ensure:

- (a) The area is not otherwise scheduled; and
- (b) To give the college an opportunity to assess any security needs:
  - (i) The name, address and telephone number of a contact person for the individual, group, entity, or organization sponsoring the activity;
  - (ii) The date, time, and requested location of the activity;
  - (iii) The nature and purpose of the activity; and
  - (iv) The estimated number of people expected to participate in the activity.

(4) Noncollege groups may use the public forum areas for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m. Shoreline Community College is not open to the general public except during these times.

#### NEW SECTION

**WAC 132G-142-050 Distribution of materials.** Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, following the relevant college procedure, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campus.

#### NEW SECTION

**WAC 132G-142-060 Trespass.** (1) Noncollege groups who violate these rules, any provision of the conduct code, or whose conduct jeopardizes the health or safety of others, will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the campus president or designee to leave the property. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under the criminal trespass provisions of chapter 9A.52 RCW or municipal ordinance.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office for action in accordance with established college policies.

(3) When the college revokes the license or privilege of any person or group to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the president or their designee

within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the president or designee will be the final decision of the college and will be issued within five business days.

**WSR 18-17-144  
PROPOSED RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2018-03—Filed August 21, 2018,  
8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-105.

Title of Rule and Other Identifying Information: Updating statute citations concerning fraternal mutual property insurers.

Hearing Location(s): On September 27, 2018, at 9:00 a.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 28, 2018.

Submit Written Comments to: Hailey Hamilton, P.O. Box 40260, Olympia, WA 98504, email RulesCoordinator@oic.wa.gov, fax 360-586-3109, by September 26, 2018.

Assistance for Persons with Disabilities: Contact Lori Villaflores, phone 360-725-7087, fax 360-586-3109, TTY 360-586-0241, email LoriV@oic.wa.gov, by September 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules to amend WAC 284-36-010 regarding domestic fraternal mutual property insurers' agents and directors.

Reasons Supporting Proposal: Currently WAC 284-36-010 cites RCW 48.36.410, this statute has been repealed. Therefore, this section should be amended to reference the current statute, RCW 48.36A.390.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.36A.390.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Hailey Hamilton, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-9654; Implementation: Steve Drutz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7209; and Enforcement: Doug Hartz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214.

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 exempt from the cost-benefit analysis requirement under RCW 34.05.328 (5)(b)(iv) as it only corrects an outdated citation.

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.

August 21, 2018  
Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 75-5, filed 10/22/75)

**WAC 284-36-010 Application.** This regulation, WAC 284-36-010 through 284-36-040, shall apply only as to domestic fraternal mutual property insurers, as defined in RCW ((48.36.410)) 48.36A.390, and to any domestic stock insurer while it is a subsidiary of such a fraternal mutual property insurer.

**WSR 18-17-148**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 21, 2018, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-18-086.

Title of Rule and Other Identifying Information: Chapter 296-305 WAC, Safety standards for firefighters; chapter 296-800 WAC, Safety and health core rules; chapter 296-802 WAC, Employee medical and exposure records; chapter 296-833 WAC, Temporary housing for workers; chapter 296-843 WAC, Hazardous waste operations; chapter 296-848 WAC, Arsenic; chapter 296-849 WAC, Benzene; chapter 296-855 WAC, Ethylene oxide; and chapter 296-856 WAC, Formaldehyde, eRules Phase 6.

Hearing Location(s): On October 2, 2018, at 9:00 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S130, Tumwater, WA 98501.

Date of Intended Adoption: November 6, 2018.

Submit Written Comments to: Kevin Walder, P.O. Box 44620, Olympia, WA 98504, email wake235@lni.wa.gov, fax 360-902-4233, by October 9, 2018.

Assistance for Persons with Disabilities: Contact Kevin Walder, phone 360-902-6681, fax 360-902-4233, email wake235@lni.wa.gov, by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- No changes in requirements as a result of this rule making.
- Consistent format for all Department of Safety and Health (DOSH) rules.
- Easy to access rules for smartphone and table [tablet] users.

- Easy navigation in PDF files provided through bookmarks in the rules.
- Easier referencing by replacing bullets and dashes with numbers and letters.
- Enhanced rule update efficiency for customers through electronic postings.
- "Housekeeping" corrections such as correcting dead links and obsolete references.
- Applying "plain talk" principles such as changing passive language to active for better clarity.
- Definitions sections moved to the beginning of several chapters, requiring the repeal of old sections and creation of new sections.

Reasons Supporting Proposal: When the agency updated its web site, template DOSH rules in HTML were broken and DOSH began forwarding rule users to the office of the code reviser web site, causing more confusion among customers. This rule package will resolve stakeholder issues that have caused confusion for rule users by bringing one clear and consistent format to all of our rules.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, 360-902-5090.

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. Since the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect, they are exempted by RCW 34.05.328 (5)(b)(iv) from the requirement for 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.

August 21, 2018

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01003 Scope and application.** (1) The rules of this chapter ((~~shall~~)) apply with respect to any and all activities, operations and equipment of employers and employees involved in providing fire protection services which are subject to the provisions of the Washington Industrial Safety and Health Act of 1973 (chapter 49.17 RCW).

(2) The provisions of this chapter apply to all firefighters and their work places, including the fire combat scene. Although enforcement of applicable standards will result from provable violations of these standards at the fire combat scene, agents of the department will not act in any manner that will reduce or interfere with the effectiveness of the emergency response of a firefighting unit. Activities directly related to the combating of a fire will not be subjected to the immediate restraint provisions of RCW 49.17.130.

(3) In the development of this document many consensus standards of the industry were considered and evaluated as to adaptability to the Washington state fire service industry. Where adaptable and meaningful, the firefighter safety elements of these standards were incorporated into this WAC. Chapter 296-305 WAC, ~~((shall))~~ must be considered as the firefighter safety standards for the state of Washington.

(4) The provisions of this chapter cover existing requirements that apply to all fire departments. All fire departments ~~((shall))~~ must have in place their own policy statement and operating instructions that meet or exceed these requirements. This chapter contains state and/or federal performance criteria that fire departments ~~((shall))~~ must meet.

(5) Unless specifically stated otherwise by rule, if a duplication of regulations, or a conflict exists between the rules regulating wildland firefighting and other rules in the chapter, only the rules regulating wildland firefighting ~~((shall))~~ will apply to wildland firefighting activities and equipment.

(6) The provisions of this chapter ~~((shall))~~ must be supplemented by the provisions of the general safety and health standards of the department of labor and industries. In the event of conflict between any provision(s) of this chapter and any provision(s) of the general safety and health standards, the provision(s) of this chapter ~~((shall))~~ must apply.

(7) Industrial fire brigades are covered under the provisions of chapter 296-811 WAC, Fire brigades.

**AMENDATORY SECTION** (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-305-01005 Definitions.** Unless the context indicates otherwise, words used in this chapter ~~((shall))~~ will have the meaning given in this section.

**Accident((+)).** An unexpected event that interrupts or interferes with the orderly progress of the fire department operations and may or may not include personal injury or property damage.

**Accountability (tracking) system((+)).** A system of firefighter accountability that provides for the tracking and inventory of all members.

**ACGIH((+)).** American Conference of Governmental Industrial Hygienists.

**ACM((+)).** Asbestos-containing material; any material containing more than 1 percent asbestos.

**Aerial devices((+)).** Fire apparatus-mounted aerial ladders, elevated platforms, and water towers.

**ANSI((+)).** American National Standards Institute.

**Apparatus((+)).** A mobile piece of fire equipment such as a pumper, aerial, tender, automobile, etc.

**Approved((+((+)))).**

**(a)** A method, equipment, procedure, practice, tool, etc., which is sanctioned, consented to, confirmed or accepted as good or satisfactory for a particular purpose or use by a person, or organization authorized to make such a judgment.

~~((2) Means))~~ **(b)** Approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the Bureau of Mines, the provisions of chapter 296-800 WAC ~~((shall))~~ must apply.

**Asbestos((+)).** Includes chrysotile, amosite, crocidolite, tremolite, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

**Belt((+)).** See ladder belt and escape belt.

**Bloodborne pathogens((+)).** Pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

**Blowup (wildfire)((+)).** Sudden increase in fire intensity or rate of spread sufficient to preclude direct control or to upset existing control plans. Often accompanied by violent convection and may have other characteristics of a fire storm.

**CBRN((+)).** Chemical, biological, radiological, and nuclear.

**Chief((+)).** The employer representative highest in rank who is responsible for the fire department's operation.

**Cold zone((+)).** The control zone of an incident that contains the command post and such other support functions as are deemed necessary to control the incident.

**Combat scene((+)).** The site where the suppression of a fire or emergency exists.

**Confined space((+)).** A space that is all of the following: ~~((1) Is))~~ **(a)** Large enough and arranged so an employee can bodily enter and perform assigned work; and

~~((2) Has))~~ **(b)** Limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and

~~((3) Is))~~ **(c)** Not designed for continuous employee occupancy.

**Containment((+)).** The actions taken to keep a material in its container (e.g., stop the release of the material or reduce the amount being released.)

**Contaminated((+)).** The presence or the reasonably anticipated presence of nuisance materials foreign to the normal atmospheres, blood, hazardous waste, or other potentially infectious materials on an item or surface.

**Contaminated laundry((+)).** Laundry which has been soiled with blood or other potentially infectious materials or may contain contaminated sharps.

**Contamination((+)).** The process of transferring a hazardous material from its source to people, animals, the environment, or equipment, which may act as a carrier.

**dBA((+)).** A measure of noise level expressed as decibels measured on the "A" scale.

**Decontamination((+(-)))<sub>2</sub>**

(a) The physical or chemical process of reducing and preventing the spread of contamination from persons or equipment used at a hazardous materials incident.

((2)) (b) The use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

**Direct attack((+))<sub>2</sub>** Any treatment applied directly to burning fuel such as wetting, smothering, or chemically quenching the fire or by physically separating the burning from unburned fuel.

**Director((+))<sub>2</sub>** The director of the department of labor and industries, or his/her designated representative.

**Disinfection((+))<sub>2</sub>** A procedure which inactivates virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms (example: Bacterial endospores) on inanimate objects.

**Disturb/disturbance((+))<sub>2</sub>** Refers to activities that disrupt the matrix of, crumble or pulverize, or generate visible debris from ACM or PACM.

**Dive rescue (public safety diving)((+))<sub>2</sub>** The act of searching for or rescuing a viable or presumably viable person(s), while working in water using underwater apparatus which supplies compressed breathing gas at the ambient pressure.

**Double-layer woven clothing((+))<sub>2</sub>** Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

**Drill tower((+))<sub>2</sub>** A structure which may or may not be attached to the station and which is principally used for training firefighters in fire service techniques.

**Drinking water((+))<sub>2</sub>** Potable water that is suitable to drink. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

**Driver/operator((+))<sub>2</sub>** A person having satisfactorily completed the fire department's "requirements of driver/operator" of a specific piece of fire apparatus.

**Emergency((+))<sub>2</sub>** A sudden and unexpected event calling for immediate action.

**Emergency incident((+))<sub>2</sub>** A specific emergency operation.

**Emergency medical care((+))<sub>2</sub>** The provision of treatment to, and/or transportation of, patients which may include first aid, cardiopulmonary resuscitation, basic life support, advanced life support, and other medical procedures that occur prior to arrival at a hospital or other health care facility.

**Emergency operations((+))<sub>2</sub>** Activities of the fire department relating to rescue, fire suppression, emergency medical care, and special operations, including response to the scene of an incident and all functions performed at the scene.

**Employee((+))<sub>2</sub>** An employee of an employer who is employed in the business of his/her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their

personal labor for an employer under this chapter whether by way of manual labor or otherwise. Also see "Member."

**Employer((+))<sub>2</sub>** Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

**Employer representative((+))<sub>2</sub>** A fire department officer authorized by the chief or director of the fire department to act in his/her behalf.

**Engine (pumper)((+))<sub>2</sub>** A piece of apparatus equipped with hose and a pump for the purpose of supplying water under pressure through hose lines.

**Escape belt((+))<sub>2</sub>** A device that fastens around the waist only and is intended to be used by the wearer only as an emergency self-rescue device.

**Escape rope((+))<sub>2</sub>** A single-purpose emergency self-escape (self-rescue) rope, not classified as a life safety rope.

**Exclusion zone((+))<sub>2</sub>** The control zone designated to exclude all unauthorized personnel, responders, and equipment.

**Note:** Examples of exclusion zones could be holes in floors, explosive devices, or collapse hazards.

**Extended attack((+))<sub>2</sub>** Suppression activity for a wildfire that has not been contained or controlled by initial attack or contingency forces and for which more firefighting resources are arriving, en route, or being ordered by the initial attack incident commander.

**Extended attack incident((+))<sub>2</sub>** A wildland fire that has not been contained or controlled by initial attack forces and for which more firefighting resources are arriving, en route, or being ordered by the initial attack incident commander. Extended attack implies that the complexity level of the incident will increase beyond the capabilities of initial attack incident command.

**Fire apparatus((+))<sub>2</sub>** A fire department emergency vehicle used for rescue, fire suppression, or other specialized functions.

**Fire boat((+))<sub>2</sub>** A fire department watercraft having a permanent, affixed firefighting capability.

**Fire department((+))<sub>2</sub>** An organization or consortium of organizations providing any or all of the following: Rescue, fire suppression, and other related activities. For the purposes of this standard the term "Fire Department" ((~~shall~~)) includes any public, private, or military organization engaging in this type of activity.

**Fire department facility((+))<sub>2</sub>** Any building or area owned, operated, occupied, or used by a fire department on a routine basis. This does not include locations where a fire department may be summoned to perform emergency operations or other duties, unless such premises are normally under the control of the fire department.

**Firefighter((+))<sub>2</sub>** A member of a fire department whose duties require the performance of essential firefighting functions or substantially similar functions.

**Fire retardant((+)).** Any material used to reduce, stop or prevent the flame spread.

**Fire suppression training((+)).** Training received by firefighters on the drill ground, drill tower, or industrial site to maintain the firefighter's proficiency.

**Fly((+)).** Extendible sections of ground or aerial ladders.

**Full body harness((+)).** See life safety harness.

**Gross decontamination((+)).** The initial phase of the decontamination process during which the amount of surface contaminant is significantly reduced.

**Ground jack((+)).** Heavy jacks attached to frame of chassis of aerial-equipped apparatus to provide stability when the aerial portion of the apparatus is used.

**Guideline((+)).** An organizational directive that establishes a standard course of action.

**Halyard((+)).** Rope used on extension ladders for the purpose of raising or lowering fly section(s). A wire cable may be referred to as a halyard when used on the uppermost fly section(s) of three or four section extension ladders.

**Harness((+)).** See life safety harness.

**Hazard communication program((+)).** A procedure to address comprehensively the issue of evaluating the potential hazards of chemicals and communicating information concerning hazards and appropriate protective measures to employees. See ((WAC 296-901-140 Hazard communication)) chapter 296-901 WAC.

**Hazard control zones((+)).**

**Cold zone:** The control zone of an incident that contains the command post and such other support functions as are deemed necessary to control the incident.

**Note:** The cold zone established the public exclusion or clean zone. There are minimal risks of human injury or exposure in this zone.

**Exclusion zone:** The control zone designated to exclude all unauthorized personnel, responders, and equipment.

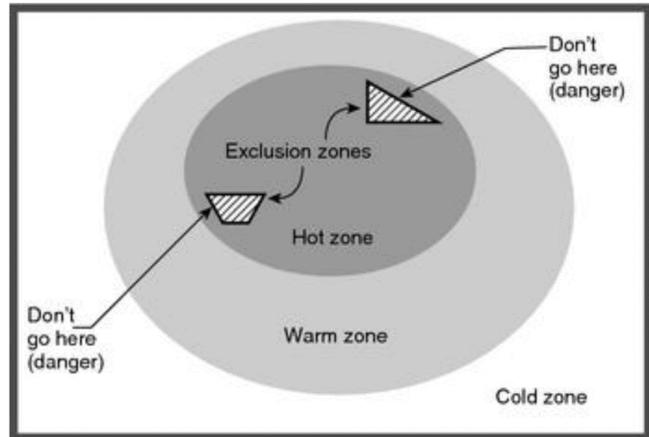
**Note:** Examples of exclusion zones could be holes in floors, explosive devices, or collapse hazards.

**Hot zone:** The control zone immediately surrounding the hazard area, which extends far enough to prevent adverse effects to personnel outside the zone. The hot zone is presenting the greatest risk to members and will often be classified as an IDLH atmosphere.

**Warm zone:** The control zone outside the hot zone where personnel and equipment decontamination and the hot zone support takes place.

**Note:** The warm zone is a limited access area for members directly aiding or in support of operations in the hot zone. Significant risk of human injury (respiratory, exposures, etc.) can still exist in the warm zone.

Hazard Zones:



**Hazards((+)).** The characteristics of facilities, equipment, systems, property, hardware or other objects and those areas of structures or buildings posing a hazard greater than normal to the general occupancy or structures.

**Hazardous area((+)).** The immediate area where members might be exposed to a hazard.

**Hazardous atmosphere((+)).** An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (escape unaided from a permit-required confined space), injury or acute illness caused by one or more of the following:

((\*) (a) Flammable gas, vapor, or mist in excess of 10% of its lower flammable limit (LFL);

((\*) (b) Airborne combustible dust at a concentration that meets or exceeds its LFL;

((\*) (c) Atmospheric oxygen concentration below 19.5% or above 23.5%;

((\*) (d) Atmospheric concentration of any substance which may exceed a permissible exposure limit. For additional information about atmospheric concentration, see chapter 296-62 WAC, Parts F, G, and I, General occupational health standards and chapter 296-841 WAC, Airborne contaminants.

**Hazardous condition((+)).** The physical condition or act which is causally related to accident occurrence. The hazardous condition is related directly to both the accident type and the agency of the accident.

**Hazardous material((+)).** A substance (solid, liquid, or gas) that when released is capable of creating harm to people, the environment, and property.

**Hazardous substances((+)).** Substances that present an unusual risk to persons due to properties of toxicity, chemical activity, corrosivity, etiological hazards of similar properties.

**Health and safety officer((+)).** The member of the fire department assigned and authorized as the administrator of the fire department health and safety program.

**Heat-related illness((+)).** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

**Hose bed((+))** Portion of fire apparatus where hose is stored.

**Hose tower((+))** A vertical enclosure where hose is hung to dry.

**Hot zone((+))** The control zone immediately surrounding the hazard area, which extends far enough to prevent adverse effects to personnel outside the zone. The hot zone is the area presenting the greatest risk to members and will often be classified as an IDLH atmosphere.

**Ice rescue((+))** The rescue of a person(s) who is afloat within an opening in the frozen surface or on the frozen surface of a body of water.

**Identify((+))** To select or indicate verbally or in writing using recognized standard terms. To establish the identity of; the fact of being the same as the one described.

**IDLH((+))** Immediately dangerous to life and health.

**Imminent hazard (danger)((+))** An act or condition that is judged to present a danger to persons or property and is so immediate and severe that it requires immediate corrective or preventative action.

**Incident command system (ICS)((+))** A system that includes: Roles, responsibilities, operating requirements, guidelines and procedures for organizing and operating an on-scene management structure.

**Incident commander((+))** The person in overall command of an emergency incident. This person is responsible for the direction and coordination of the response effort.

**Incident safety officer((+))** The person assigned the command staff function of safety officer in the incident command system.

**Incipient (phase) fire((+))** The beginning of a fire; where the oxygen content in the air has not been significantly reduced and the fire is producing minute amounts of water vapor, carbon dioxide, carbon monoxide and other gases; the room has a normal temperature and can be controlled or extinguished with a portable fire extinguisher or small hose, e.g., a kitchen stove fire.

**Indirect attack((+))** A method of suppression in which the control line is located some considerable distance away from the fire's active edge. Generally done in the case of a fast-spreading or high-intensity fire and to utilize natural or constructed firebreaks or fuelbreaks and favorable breaks in the topography. The intervening fuel is usually backfired; but occasionally the main fire is allowed to burn to the line, depending on conditions.

**Industrial fire brigade((+))** An organized group of employees whose primary employment is other than firefighting who are knowledgeable, trained and skilled in specialized operations based on site-specific hazards present at a single commercial facility or facilities under the same management.

**Initial action((+))** The actions taken by the first resources to arrive at a wildfire or wildland fire use incident. Initial actions may be size up, patrolling, monitoring, holding action or aggressive initial attack.

**Initial attack((+))** A planned response to a wildfire given the wildfire's potential fire behavior. The objective of initial attack is to stop the fire and put it out in a manner consistent with firefighter and public safety and values to be protected.

**Initial fire suppression training((+))** The training of firefighters in recognizing sources and locations of potential fires and the method of fire suppression to be used.

**Initial stages((+))** Tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

**Injury((+))** Physical damage suffered by a person that requires treatment by a practitioner of medicine (a physician, nurse, paramedic or EMT) within one year of the incident regardless of whether treatment was actually received.

**Interior structural firefighting((+))** The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. See structural firefighting.

**Known rescue((+))** A situation of compelling evidence where a member sees, hears, or is directly told of a trapped and viable victim by an occupant who has escaped or is a credible witness.

**Ladder belt((+))** A device that fastens around the waist only and is used as a positioning device for a person on a ladder.

**Life safety or rescue rope((+))** Rope dedicated solely for the purpose of constructing lines for supporting people during rescue, firefighting, or other emergency operations, or during training evolutions.

**Life safety harness((+))** A configuration of connected straps to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

**Live fire((+))** Any unconfined open flame or device that can propagate fire to the building, structure, or other combustible materials.

**Live fire training((+))** Any fire set within a structure, tank, pipe, pan, etc., under controlled conditions to facilitate the training of firefighters under actual fire conditions.

**Locking in((+))** The act of securing oneself to a ladder by hooking a leg over a rung and placing top of foot against the other leg or against the ladder.

**May((+))** A permissive use or an alternative method to a specified requirement.

**Mayday((+))** The nationally adopted "call for help" term used to indicate that an emergency responder is in a situation of imminent peril where they are in need of immediate help.

**Member((+))** A person involved in performing the duties and responsibilities of a fire department under the auspices of the organization. A fire department member may be a full-time or part-time employee or a paid or unpaid volunteer, may occupy any position or rank within the fire department, and engages in emergency operations. Also see Employee.

**Mobile attack((+))** The act of fighting wildland fires from a moving engine.

**Must, Mandatory.**

**NFPA((+))** National Fire Protection Association.

**NIMS((+))** The National Incident Management System.

**NIOSH((+))** National Institute of Occupational Safety and Health.

**Non-skid((+))** The surface treatment that lessens the tendency of a foreign substance to reduce the coefficient of friction between opposing surfaces.

**Occupational exposure((+))<sub>2</sub>** Means reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

**Officer((+))<sub>2</sub>**

((+)) (a) Person in charge of a particular task or assignment.

((2)) (b) A supervisor.

**OSHA((+))<sub>2</sub>** Occupational Safety and Health Administration.

**Other potentially infectious materials (OPIM)((+))<sub>2</sub>**

(a) The following body fluids: Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

((2)) (b) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

((3)) (c) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

**Outrigger((+))<sub>2</sub>** Manually or hydraulically operated metal enclosures and jacks which are extended and placed in contact with the ground to give the apparatus a wide, solid base to support different loads.

**Overhaul((+))<sub>2</sub>** A firefighting term involving the process of final extinguishment after the main body of a fire has been knocked down. All traces of fire must be extinguished at this time.

**PACM((+))<sub>2</sub>** Presumed asbestos-containing material. Thermal system insulation and surfacing material found in buildings, vessels and vessel sections constructed no later than 1980.

**PASS((+))<sub>2</sub>** Personal alert safety system.

**PEL((+))<sub>2</sub>** Permissible exposure limit.

**Personal protective equipment (PPE)((+))<sub>2</sub>**

(a) The equipment provided to shield or isolate a person from the chemical, physical, and thermal hazards that may be encountered at a hazardous materials incident. Personal protective equipment includes both personal protective clothing and respiratory protection. Adequate personal protective equipment should protect the respiratory system, skin, eyes, face, hands, feet, head, body, and hearing.

((2)) (b) Specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts, or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

**Platform((+))<sub>2</sub>** The portion of a telescoping or articulating boom used as a working surface.

**Positive communication((+))<sub>2</sub>** Visual, audible, physical, safety guide rope, or electronic means which allows for two way message generation and reception.

**PPE((+))<sub>2</sub>** Personal protective equipment.

**Probable fatality((+))<sub>2</sub>**

(a) An occupational injury or illness, which, by the doctor's prognosis, could lead to death.

((2)) (b) An occupational injury or illness, which by its very nature, is considered life threatening.

**Protective clothing((+))<sub>2</sub>** Equipment designed to protect the wearer from heat and/or hazardous materials contacting the skin or eyes. Protective clothing is divided into five types:

((+)) (a) Structural firefighting protective clothing;

((2)) (b) Liquid splash-protective clothing;

((3)) (c) Vapor-protective clothing;

((4)) (d) High temperature-protective proximity clothing; and

((5)) (e) Wildland firefighting clothing.

**Note:** See Protective ensemble.

**Protective ensemble((+))<sub>2</sub>** Multiple elements of clothing and equipment designed to provide a degree of protection for firefighters from adverse exposures to the inherent risks of structural firefighting operations and certain other emergency operations. The elements of the protective ensemble are helmets, coats, trousers, gloves, footwear, interface components (hoods), and if applicable, personal alert system (PASS) devices, and self-contained breathing apparatus.

**Proximity protective clothing((+))<sub>2</sub>** Radiant reflective protective garments configured as a coat and trousers, or as a coverall, and interface components that are designed to provide protection for the firefighter's body from conductive, convective, and radiant heat.

**Pumper((+))<sub>2</sub>** See engine.

**Qualified((+))<sub>2</sub>** One who by possession of a recognized degree, certificate or professional standing, or who by knowledge, training or experience has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work or the project.

**Rapid intervention crew (RIC)((+))<sub>2</sub>** On-scene team of at least two members designated, dedicated and equipped to effect an immediate rescue of firefighters if the need arises (also known as RIT).

**RCW((+))<sub>2</sub>** Revised Code of Washington.

**Rehabilitation((+))<sub>2</sub>** The process of providing mental and medical evaluation, rest, hydration, and nourishment to members who are engaged in emergency operations.

**Rescue((+))<sub>2</sub>** Those activities directed at locating endangered persons at an emergency incident and removing those persons from danger.

**Rescue craft((+))<sub>2</sub>** Any fire department watercraft used for rescue operations.

**Respirator((+))<sub>2</sub>** A device designed to protect the wearer from breathing harmful atmospheres. See respiratory protection.

**Respiratory equipment((+))<sub>2</sub>** Self-contained breathing apparatus designed to provide the wearer with a supply of respirable atmosphere carried in or generated by the breathing apparatus. When in use, this breathing apparatus requires no intake of air or oxygen from the outside atmosphere.

((+)) (a) Respirators (closed circuit): Those types of respirators which retain exhaled air in the system and recondition such air for breathing again.

((2)) (b) Respirators (open circuit): Those types of respirators which exhaust exhaled air to the outside of the mask into the ambient air.

~~((3))~~ **(c) Respirators (demand):** Those types of respirators whose input air to the mask is started when a negative pressure is generated by inhalation.

~~((4))~~ **(d) Respirators (pressure demand):** Those types of respirators which constantly and automatically maintain a positive pressure in the mask by the introduction of air when the positive pressure is lowered (usually from .018 psi to .064 psi) through the process of inhalation or leakage from the mask.

**Respiratory protection(+).** Equipment designed to protect the wearer from the inhalation of contaminants. Respiratory protection is divided into three types:

~~((1))~~ **(a) Positive pressure self-contained breathing apparatus (SCBA);**

~~((2))~~ **(b) Positive pressure airline respirators;**

~~((3))~~ **(c) Negative pressure air purifying respirators.**

**Responding(+).** The usual reference to the act of responding or traveling to an alarm or request for assistance.

**Risk assessment(+).** To set or determine the possibility of suffering harm or loss, and to what extent.

**Rope rescue equipment(+).** Components used to build rope rescue systems including life safety rope, life safety harnesses and auxiliary equipment.

**Rope rescue system(+).** A system composed of rope rescue equipment and an appropriate anchor system intended to support people during rescue, firefighting, or other emergency operations, or during training evolutions.

**Safe and healthful working environment(+).** The work surroundings of an employee with minimum exposure to unsafe acts and/or unsafe conditions.

**Safety net(+).** A rope or nylon strap net not to exceed 6-inch mesh, stretched and suspended above ground level at the base of drill tower, and at such a height that a falling body would be arrested prior to striking the ground.

**Scabbard(+).** A guard which will prevent accidental injury and covers the blade and pick of an axe or other sharp instrument when worn by the firefighter.

**SCBA(+).** Self contained breathing apparatus.

**Service testing(+).** The regular, periodic inspection and testing of apparatus and equipment according to an established schedule and procedure, to insure that it is in safe and functional operating condition.

~~(**Shall: Mandatory.**)~~

**Should(+).** Recommended.

**Standard operating procedure or guidelines(+).** An organizational directive that establishes a standard course of action.

**Standby firefighters(+).** On-scene members designated to effect an immediate rescue of the initial team operating in the hot zone.

**Station (fire station)(+).** Structure in which fire service apparatus and/or personnel are housed.

**Structural firefighting(+).** The activities of rescuing, fire suppression, and property conservation involving buildings, enclosed structures, aircraft, vehicles, vessels, or similar properties that are involved in a fire or emergency situation. See interior structural firefighting.

**Structural firefighting protective clothing(+).** This category of clothing, often called turnout or bunker gear, means the protective clothing normally worn by firefighters

during structural firefighting operations. It includes a helmet, coat, pants, boots, gloves, and a hood. Structural firefighters' protective clothing provides limited protection from heat but may not provide adequate protection from the harmful gases, vapors, liquids, or dusts that are encountered during hazardous materials incidents.

**Surf rescue(+).** The rescue of a person(s) who is afloat on the surface or the subsurface retrieval of a person(s) submerged in ocean water or bodies of water that are connected to oceans that either experience a twice daily rise and fall of their surface caused by gravitational pull of the moon or experience a corresponding ebb and flow of water in response to tides with a surf height of 1 foot or greater.

**Surface water rescue(+).** The rescue of a person(s) who is afloat on the surface of a body of water. A trained rescuer (surface based swimmer) may dive for submerged victims, limited to the rescuer's ability, with no sustained underwater capability other than a mask, fins, and snorkel in relatively shallow depths and retrieve or mark a victim.

**Swift water rescue(+).** The removal of person(s) from threat or harm from water that is moving faster than walking pace (1 Knot, 1.85 km/hr, 1.15 mph).

**Tail/running board(+).** Standing space on the side or rear of an engine or pumper apparatus.

**Team(+).** Two or more individuals who are working together in positive communication with each other through visual, audible, physical, safety guide rope, electronic, or other means to coordinate their activities and who are in close proximity to each other to provide assistance in case of emergency.

**Tillerman(+).** Rear driver of tractor-trailer aerial ladder.

**Trench(+).** A narrow excavation made below the surface of the ground. The depth is generally greater than the width, but the width of a trench is not greater than 15 feet.

**Turnout clothing(+).** See structural firefighting protective clothing.

**Turntable(+).** The rotating surface located at the base of an aerial ladder, or boom, on aerial apparatus.

**Uncontrolled fire(+).** Any fire which threatens to destroy life, property, or natural resources; and (a) is not burning within the confines of firebreaks; or (b) is burning with such intensity that it could not be readily extinguished with ordinary tools commonly available.

**Urban wildfire(+).** An uncontained fire requiring suppression action, usually spreading through ground cover, vegetative fuels, brush, grass, and landscaping; often threatening residential and commercial structures within an urban environment with access to established roadways and water systems.

**Vapor barrier(+).** Material used to prevent or substantially inhibit the transfer of water, corrosive liquids and steam or other hot vapors from the outside of a garment to the wearer's body.

**Vapor barrier clothing(+).** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

**Variance((+))** An allowed or authorized deviation from specific standard(s) when an employer substitutes measures which afford an equal degree of safety. Variances are issued as temporary or permanent with interim measures issued, when requested, until a determination or decision is made.

**Vessel((+))** Means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, including special-purpose floating structures not primarily designed for or used as a means of transportation on water.

**WAC((+))** Washington Administrative Code.

**Warm zone((+))** The control zone outside the hot zone where personnel and equipment decontamination and hot zone support take place.

**Note:** The warm zone is a limited access area for members directly aiding or in support of operations in the hot zone. Significant risk of human injury (respiratory, exposures, etc.) can still exist in the warm zone.

**Water rescue((+))** Any incident that involves the removal of victim(s) from any body of water other than a swimming pool. This includes rivers, creeks, lakes, washes, storm drains, or any body of water, whether still or moving.

**Wheel blocks (chocks)((+))** A block or wedge placed under a wheel to prevent motion.

**Wildland((+))** An area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar transportation facilities. Structures, if any, are widely scattered.

**Wildland fire((+))** Any nonstructure fire that occurs in the wildland.

**Wildland firefighting((+))** The activities of fire suppression and property conservation in woodlands, forests, grasslands, brush, and other such vegetation or any combination of vegetation, that is involved in a fire situation but is not within buildings or structures.

**Wildland firefighting enclosure((+))** A fire apparatus enclosure with a minimum of three sides and a bottom.

**Wildland urban interface((+))** The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

**WISHA((+))** Washington Industrial Safety Health Act.

**Work environment((+))** The surrounding conditions, influences or forces to which an employee is exposed while working.

Any premises, room or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control. For the purposes of this code, fireground and emergency scenes are also considered places of employment.

**Work/rest ratio((+))** An expression of the amount of rest that is required for each hour an individual is in work status. Current NWCG guidelines require one hour of rest for every two hours in work status.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01007 Variance and procedure.** (1) Conditions may exist in operations that a state standard will not have practical use. The director may issue a variance

from the requirements of the standard when another means of providing equal protection is provided.

(2) Applications for variances will be reviewed and investigated by the department. Variances granted ((shall)) will be limited to the specific WAC code covered in the application and may be revoked for cause. The variance ((shall)) must remain prominently posted on the premises while in effect.

**Note:** Variance forms may be obtained from the department upon request. Requests for variance from safety and health standards ((shall)) must be made in writing to the assistant director, Consultation and Compliance Services Division, Department of Labor and Industries, P.O. Box 44600, Olympia, Washington 98504-4600.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01501 Injury and illness reports for firefighters.** (1) Notice of injury or illness.

(a) Employees must report work-related injuries or illnesses to their employer before the end of their duty period, but not later than twenty-four hours after the incident.

(b) Exception: In the event that symptoms of an occupational injury or illness are not apparent at the time of the incident, the employee ((shall)) must report the symptoms to ((his/her)) their employer within forty-eight hours after becoming aware of the injury or illness.

(c) Within eight hours after the fatality or probable fatality of any firefighter or employee from a work-related incident or the inpatient hospitalization of any employee as a result of a work-related incident, the employer of any employees so affected, ((shall)) must orally report the fatality/hospitalization by telephone (1-800-423-7233) or in person, to the nearest office of the department.

(i) This requirement applies to each such fatality or hospitalization which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer ((shall)) must make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection ((shall)) must relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(2) Recordkeeping - Written reports; all fire service employers ((shall)) must maintain records of occupational injuries and illnesses. Reportable cases include every occupational death, every occupational illness, or each injury that involves one of the following: Unconsciousness, inability to perform all phases of regular duty-related assignment, inability to work full time on duty, temporary assignment, or medical treatment beyond first aid.

(3) All fire departments ((shall)) must record occupational ((injury)) injuries and illnesses on OSHA Form 300, Log of Work-Related Injuries and Illnesses.

(4) Each employer ((shall)) must post an annual summary of occupational injuries and illnesses for each establish-

ment. This summary ((shall)) must consist of a copy of the year's totals from OSHA Form 300A, Summary of Work-Related Injuries and Illnesses and the following information from that form: Calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. An OSHA Form 300A ((shall)) must be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted. The summary ((shall)) must be completed by February 1 each calendar year. The summary covering the previous calendar year ((shall)) must be posted no later than February 1st, and ((shall)) must remain in place until April 30th.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01503 Accident/incident investigation.** (1) After the emergency actions following accidents that cause serious injuries with immediate symptoms or incidents resulting in exposure to occupational disease-causing chemicals or physical agents, a preliminary investigation of the cause ((shall)) must be conducted. The investigation ((shall)) must be conducted by a person designated as qualified by the employer. The fire department ((shall)) must establish a written procedure and a program for investigating, and evaluating the facts, relating to the cause of accidents. The findings of the investigation ((shall)) must be documented by the employer for reference at any following formal investigations.

(2) Equipment involved in an accident resulting in an immediate or probable fatality ((shall)) must not be moved until a representative of the division of occupational safety and health investigates the accident and releases such equipment, except where removal is essential to prevent further accident. When necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(3) Upon arrival of the department's investigator, the employer ((shall)) must assign personnel to assist the investigator ((such personnel)) as are deemed necessary by the department to conduct the investigation.

(4) The fire department ((shall)) must preserve all records, photographic materials, audio, video, recordings, or other documentation concerning an accident.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01505 Accident prevention program.** (1) All fire departments ((shall)) must develop and implement a written safety program.

(2) Fire department safety programs ((shall)) must have an assigned health and safety officer.

(3) Each employer ((shall)) must develop a formal accident-prevention program, tailored to the needs of the fire department and to the type of hazards involved. The department of labor and industries' consultation and compliance services division may be contacted for assistance in developing appropriate programs.

A safety orientation program describing the employer's safety program ((shall)) must include:

(a) How and when to report injuries, including instruction as to the location of first-aid facilities.

(b) How to report unsafe conditions and practices.

(c) The use and care of required personal protective equipment.

(d) The proper actions to take in event of emergencies including the routes of exiting from areas during emergencies.

(e) Identification of the hazardous gases, chemicals or materials involved, along with the instructions on the safe use and emergency action following accidental exposure.

(f) A description of the employer's total safety program.

(g) An on-the-job review of the practices necessary to perform the initial job assignments in a safe manner.

(4) Fire departments ((shall)) must have a safety committee to serve in an advisory capacity to the fire chief. The number of employer-selected members ((shall)) must not exceed the number of employee-elected members.

(5) The frequency of safety meetings ((shall)) must be determined by the safety committee, but ((shall)) must not be less than one hour per calendar quarter, however, special meetings may be held at the request of either party.

(6) Minutes ((shall)) must be taken of all safety meetings. After review by the chief or ((his/her)) their designee the minutes ((shall)) must be conspicuously posted at all stations.

(7) Employee submitted written suggestions or complaints ((shall)) must be considered. Action recommendations by the committee ((shall)) must be transmitted in writing to the fire chief. The chief or ((his/her)) the designated agent will reply to the submitter.

(8) Inspections of fire stations ((shall)) must be made at least monthly and records maintained to ensure that stations are reasonably free of recognized hazards. These inspections ((shall)) must include, but not be limited to, tools, apparatus, extinguishers, protective equipment, and life safety equipment.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01507 Fire department health and safety officer.** (1) The duties and responsibilities of the fire department health and safety officer ((shall)) must include, but are not limited to:

(a) Plan and coordinate safety activities.

(b) Work closely with the safety committee.

(c) Ensure accidents are investigated.

(d) Devise corrective measures to prevent accidents.

(2) Realizing safety training and recordkeeping are management's responsibility, the fire department health and safety officer ((shall)) must ensure the following requirements are being met:

(a) Ensure safety training for all employees.

(b) Ensure safety directives are complied with.

(c) Ensure that records are kept, but not limited to the following:

(i) Accidents;

- (ii) Injuries;
- (iii) Inspections;
- (iv) Exposures;
- (v) Medical monitoring;
- (vi) Safety meetings;
- (vii) Apparatus;
- (viii) Equipment;
- (ix) Protective clothing;
- (x) Other fire department safety activities.

(3) The fire department health and safety officer, through the fire chief, ~~((shall))~~ must have the authority and responsibility to identify and recommend correction of safety and health hazards.

(4) The fire department health and safety officer ~~((shall))~~ must maintain a liaison with staff officers regarding recommended changes in equipment, procedures, and recommended methods to eliminate unsafe practices and reduce existing hazardous conditions.

Additional Reference: NFPA 1521 Standard for Fire Department Safety Officer, may be used as a guide for duties and responsibilities relating to the safety officer.

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-305-01509 Management's responsibility.**

(1) It ~~((shall))~~ must be the responsibility of management to establish, supervise, maintain, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment, as it applies to both nonemergency and emergency conditions.

(b) An accident prevention program as required by this chapter.

(c) Programs for training employees in the fundamentals of accident prevention.

(d) Procedures to be used by the fire department health and safety officer and incident commander to ensure that emergency medical care is provided for members on duty.

(e) An accident investigation program as required by this chapter.

(f) Policies that clarify "rules of engagement" or parameters when personnel should commit to work activities within a hot zone.

(g) Policies that clarify the right of every employee to notify the employer of potential life-threatening situations during emergency operations and processes that clarify how this notification is to occur.

(2) The fire department ~~((shall))~~ must be responsible for providing suitable expertise to comply with all testing requirements in this chapter. Such expertise may be secured from within the fire department, from equipment and apparatus manufacturers, or other suitable sources.

(3) Members who are under the influence of alcohol or drugs ~~((shall))~~ must not participate in any fire department operations or other functions. This rule does not apply to persons taking prescription drugs as directed by a physician or dentist providing such use does not endanger the worker or others.

(4) Alcoholic beverages ~~((shall))~~ must not be allowed in station houses, except at those times when station houses are

used as community centers, with the approval of management.

(5) A bulletin board or posting area exclusively for safety and health and large enough to display the required safety and health posters. The WISHA poster (WISHA form ~~((F416-081-000))~~ F416-081-909) and other safety education material ~~((shall))~~ must be provided. A bulletin board of "white background" and "green trim" is recommended.

(6) The fire department ~~((shall))~~ must develop and maintain a hazard communication program as required by WAC 296-901-14010, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may routinely be exposed to, in the course of their employment.

(7) Personnel.

(a) The employer ~~((shall-assure))~~ must ensure that employees are physically capable of performing duties that may be assigned to them.

(b) The employer ~~((shall))~~ must not permit employees with known physical limitations reasonably identifiable to the employer, for example, heart disease or seizure disorder, to participate in physically demanding activities unless the employee has been released to participate in such activities by a physician or other licensed health care professional (LHCP) who is qualified by training or experience as determined by the fire department to evaluate firefighters.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01511 Employee's responsibility.** (1)

Firefighters ~~((shall))~~ must cooperate with the employer and other employees in efforts to eliminate accidents.

(2) Each firefighter or other employee ~~((shall))~~ must comply with the provisions of this chapter which are applicable to ~~((his/her))~~ their own actions and conduct in the course of ~~((his/her))~~ their employment.

(3) Firefighters and other employees ~~((shall))~~ must notify the appropriate employer representative of unsafe work practices and of unsafe conditions of equipment, apparatus, or work places.

(4) Firefighters and other employees ~~((shall))~~ must apply the principles of accident prevention in their work. They ~~((shall))~~ must use all required safety devices, protective equipment, and safety practices, as provided and/or developed by management.

(5) Each firefighter ~~((shall))~~ must take proper care of all personal protective equipment.

(6) Firefighters ~~((shall))~~ must attend, when on duty, required training and/or orientation programs designed to increase their competency in occupational safety and health.

(7) Firefighters who are under the influence of alcohol or drugs ~~((shall))~~ must not participate in any fire department operations or other functions. This rule does not apply to persons taking prescription drugs as directed by a physician or dentist providing such use does not endanger the worker or others.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01513 Safe place standards.** (1) ~~((Every employer shall))~~ The employer must furnish and require the use of appropriate safety devices and safeguards. All work methods, and operations ~~((shall))~~ must be so designed as to promote the safety and health of employees. The employer ~~((shall))~~ must do everything reasonably necessary to protect the safety and health of employees.

(2) No firefighter or other employee, employer or employer representative ~~((shall))~~ must:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice or warning furnished for use in any employment or place of employment.

(b) Interfere in any way with the use of any safety device, method or process adopted for the protection of any employee.

AMENDATORY SECTION (Amending WSR 04-07-160, filed 3/23/04, effective 5/1/04)

**WAC 296-305-01515 First-aid training and certification.** (1) All firefighters except directors of fire departments and the directors' designated personnel, ~~((shall))~~ must have as a minimum first-aid training as evidenced by a current, valid first-aid card, EMT or First Responder certification.

(2) New firefighters ~~((shall))~~ must have such first-aid training within ~~((90))~~ ninety days of the date of their employment or enroll for training in the next available class for which they are eligible.

(3) Fire service duties include exposure to bloodborne pathogens. The requirements of this section and chapter 296-823 WAC, Occupational exposure to bloodborne pathogens, ~~((shall))~~ must apply.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-01517 First-aid kits.** (1) To ~~((assure))~~ ensure the emergency medical care of the firefighters there ~~((shall))~~ must be present at each emergency incident at least the following items:

- 1 (one) utility scissors, EMT-type
- 1 CPR barrier
- 3 (three) rolls 1 inch adhesive tape
- 6 (six) 4" x 4" sterile, individually wrapped gauze pads
- 4 (four) combination pads, sterile, individually wrapped
- 4 (four) soft roller bandages, assorted size, sterile, individually wrapped cling type
- 2 (two) burn sheets, sterile, individually wrapped
- 2 (two) triangular bandages
- 1 (one) multitrauma dressing, sterile
- 2 (two) supply disposable gloves
- 2 (two) wire splints or equivalent

(2) All fire stations ~~((shall))~~ must maintain a first-aid kit. The kit ~~((shall))~~ must contain at least the following items:

- 6 (six) 4" x 4" sterile, individually wrapped gauze pads
- 4 (four) combination pads, sterile, individually wrapped
- 2 (two) rolls 1 inch adhesive tape

4 (four) soft roller bandages, assorted size, sterile, individually wrapped cling type

2 (two) triangular bandages

1 (one) utility scissors, EMT-type

1 (one) pair tweezers

1 (one) package assorted adhesive bandages

(3) All fire apparatus ~~((shall))~~ must contain a first-aid kit as described in WAC ~~((296-800-150))~~ 296-800-15020.

(4) All fire departments providing emergency medical services to the public ~~((shall))~~ must conform to the requirements of chapter 18.73 RCW Emergency Care and Transportation Services (and if applicable, chapter 248-17 WAC, Ambulance Rules and Regulations) which require additional first-aid equipment.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02001 Personal protective equipment and protective clothing.**

**Note:** For wildland firefighting personal protective equipment and clothing requirements see WAC 296-305-07012, Personal protective clothing and equipment for wildland firefighting.

(1) Employers ~~((shall))~~ must provide and maintain at no cost to the employee the appropriate protective ensemble/protective clothing to protect from the hazards to which the member is or is likely to be exposed. Information on hazard assessments can be found in WAC 296-800-16005. Employers ~~((shall))~~ must ensure the use of all protective equipment and clothing required by this standard. Full protective equipment designated for the task, ~~((shall))~~ must be worn for all department activities.

(2) Firefighters ~~((shall))~~ must be trained in the function, donning and doffing, care, use, inspection, maintenance and limitations of the protective equipment assigned to them or available for their use.

(3) Protective clothing and protective equipment ~~((shall))~~ must be used and maintained in accordance with manufacturer's instructions. A written maintenance, repair, retirement, servicing, and inspection program ~~((shall))~~ must be established for protective clothing and equipment. Specific responsibilities ~~((shall))~~ must be assigned for inspection and maintenance. This requirement applies to firefighter's personally owned equipment as well as equipment issued by the employer.

(4) The fire department ~~((shall))~~ must provide for the cleaning of protective clothing and contaminated station/work uniforms at no cost to the employee. Such cleaning ~~((shall))~~ must be performed by either a cleaning service, or at a fire department facility, that is equipped to handle contaminated clothing. If the fire department does its own cleaning, they ~~((shall))~~ must follow the manufacturer's recommended cleaning procedure or the 2008 edition of NFPA 1851, Standard on Selection, Care and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.

(5) Personal protective equipment and clothing ~~((shall))~~ must be of a type specified by NIOSH, MSHA, NFPA, ANSI, or as specifically referenced in the appropriate section of this chapter.

(6) Station/work uniforms. Station/work uniforms are not themselves intended as primary protective garments.

(a) Station/work uniforms if provided, ~~((shall))~~ must meet the requirements as specified in the 1990 or 1994 edition of NFPA 1975, Standard on Station/Work Uniforms for Fire and Emergency Services. However, departments are not required to provide station/work uniforms for their employees.

(b) Station/work uniforms include trousers, and/or coveralls, but exclude shirts, underwear, and socks.

(c) Members ~~((shall))~~ must not wear any clothing that is determined to be unsafe due to poor thermal stability or poor flame resistance when engaged in or exposed to the hazards of structural firefighting. The fire department ~~((shall))~~ must inform members of the hazards of fabrics that melt, drip, burn, stick to the skin and cause burns to the wearer due to poor thermal stability or poor flame resistance, and ~~((shall))~~ must prohibit their use by employees. Garments that are not provided by the employer, and that are made from all or mostly cotton, will meet the requirements of this section.

(d) Garments meeting the requirements of WAC 296-305-07012(1), meet the intent of this section.

(7) Proximity firefighting clothing:

(a) All turnout clothing used as proximity clothing ~~((shall))~~ must meet the requirements of the 2000 edition of NFPA, 1976 Standard on Protective Ensemble for Proximity Firefighting.

(b) There ~~((shall))~~ must be at least a two-inch overlap of all layers of the protective coat and the protective trousers so there is no gaping of the total thermal protection when the protective garments are worn. The minimum overlap ~~((shall))~~ must be determined by measuring the garments on the wearer, without SCBA, with the wearer in the most stretched position, hands together reaching overhead as high as possible.

(c) Single piece protective coveralls ~~((shall))~~ must not be required to have an overlap of all layers as long as there is continuous full thermal protection.

(d) Fire departments that provide protective coats with protective resilient wristlets secured through a thumb opening may provide gloves of the gauntlet type for use with these protective coats. Fire departments that do not provide such wristlets attached to all protective coats ~~((shall))~~ must provide gloves of the wristlet type for use with these protective coats.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02002 Structural firefighting clothing (SFF).** (1) All SFF clothing purchased after January 1, 2014, ~~((shall))~~ must meet the requirements of the 1991 edition of NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting, or the 1997 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting. Firefighters ~~((shall))~~ must not wear personal protective clothing manufactured prior to 1991, except for training purposes in nonhazardous areas.

(2) SFF clothing ~~((shall))~~ must be maintained as specified by the manufacturer.

(3) Repairs to SFF clothing ~~((shall))~~ must be done to the manufacturer's specification by qualified individuals approved by the manufacturer. Repairs must be made using materials and methods in accordance with the applicable standards under which the article was produced. Repairs include any and all alterations, modifications, additions, deletions or any other change made to the manufacturer's PPE article.

(4) SFF clothing which is damaged or doesn't comply with this section ~~((shall))~~ must not be used.

(5) All SFF clothing ~~((shall))~~ must be inspected semiannually by an individual qualified by the employer. Inspection intervals ~~((shall))~~ must not exceed six months.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02004 Protection ensemble for structural firefighting.** (1) **Face and eye protection.**

(a) Face and eye protection shall be provided for and used by firefighters engaged in fire suppression and other operations involving hazards to the eye and face at all times when the face isn't protected by the full facepiece of the SCBA. Primary face and eye protection appropriate for a given specific hazard ~~((shall))~~ must be provided for, and used by, members exposed to that specific hazard. Such primary face and eye protection ~~((shall))~~ must meet the requirements of the 2003 edition of ANSI Z87.1.

(b) Persons whose vision requires the use of corrective lenses in spectacles, and who are required by this standard to wear eye protection, ~~((shall))~~ must wear goggles or spectacles of one of the following types:

(\*) (i) Spectacles with protective lenses that provide optical correction.

(\*) (ii) Goggles that can be worn over corrective spectacles without disturbing the adjustment of the spectacles.

(\*) (iii) Goggles that incorporate corrective lenses mounted behind the protective lens.

(c) When limitations or precautions are indicated by the manufacturer, they ~~((shall))~~ must be transmitted to the user and care taken to see such limitations and precautions are strictly observed.

(d) Care, use and maintenance for any type of eye or face protection ~~((shall))~~ must follow the manufacturer's suggested recommendations.

(e) Goggles ~~((shall))~~ must be inspected, cleaned and disinfected prior to being reissued to other employees.

(f) Helmet face shields ~~((shall))~~ must meet the requirements of the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

**Note:** The helmet face shield alone doesn't always provide adequate eye protection against flying particles, splash, gases and vapors. For known eye hazards, such as cutting with power saws, chopping, drilling and using extrication equipment, the face shield should be worn with additional eye protection.

(g) For firefighters that don't have a helmet face shield, flexible or cushioned fitting goggles ~~((shall))~~ must be provided.

(h) Goggles ((~~shall~~)) must consist of a wholly flexible frame, forming a lens holder or a rigid frame with integral lens or lenses, having a separate, cushioned fitting surface on the full periphery of the facial contact area.

(i) Materials used ((~~shall~~)) must be chemical-resistant, nontoxic, nonirritating and slow burning.

(ii) There ((~~shall~~)) must be a positive means of support on the face, such as an adjustable headband of suitable material or other appropriate means of support to retain the frame comfortably and snugly in front of the eyes.

(2) **Hearing protection.** Fire departments must address noise issues as required by chapter 296-817 WAC, Hearing loss prevention (noise).

**Note:** Although noise levels may exceed the 115 dBA ceiling limit for noise exposures during structural firefighting activities, hearing protection that will survive these conditions and not interfere with other essential PPE may not always be available. Fire departments must consider daily noise exposures and exposures to noise outside direct firefighting activities when selecting hearing protection and may use less protection during direct fire suppression when adequate hearing protection isn't technically feasible.

### (3) Hand protection.

(a) Firefighters' gloves ((~~shall~~)) must, when worn with turnout clothing, provide protection to the wrist area. In turnout clothing where wristlet protection isn't provided firefighters' gloves ((~~shall~~)) must be tight-fitting at the top.

(b) Fire departments ((~~shall~~)) must establish written policy and procedure for the care, use, cleaning, replacement or retirement criteria for gloves issued.

(c) Firefighters' gloves used during structural firefighting operations including rescue of victims from fires or emergency medical operations where sharp or rough surfaces are likely to be encountered ((~~shall~~)) must meet the requirements of the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

**Notes:** ((\*) 1. Firefighters' gloves aren't designed to provide protection against all environments. For gloves needed to fulfill a specific requirement see that specific section of this chapter. It is the intent of this section to provide protection from intrusion through the glove by certain chemicals and from bloodborne pathogens. Consult the glove manufacturers' recommendations.

((\*) 2. Firefighters' hands should be sized for compliance using the sizing chart specified in the 2000 edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(4) **Body protection.** Body protection ((~~shall~~)) must be coordinated with torso, hand, head, foot, respiratory, and face protection as outlined in WAC 296-305-02001 through 296-305-02019 and 296-305-04001.

### (5) Foot protection.

(a) Protective footwear purchased after January 1, 2014, ((~~shall~~)) must comply with the 2007 or later edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(b) Fire departments ((~~shall~~)) must establish written policies and procedures on the use, maintenance, and retirement criteria for footwear in conjunction with the manufacturer's recommendations.

**Note:** Fire departments should establish cleaning and drying instructions for protective footwear, including applicable warnings regarding detergents, soaps, cleaning additives and bleaches.

(c) Firefighter footwear may be resoled, but upon resoling the footwear ((~~shall~~)) must meet the requirements specified in this section.

(6) **Head protection.** Firefighters who engage in or are exposed to the hazards of structural firefighting ((~~shall~~)) must be provided with and use helmets that meet, as a minimum, the requirements of the 1987 edition of NFPA 1972, Standard on Helmets for Structural Fire Fighting.

(a) Helmets purchased after January 1, 2014, ((~~shall~~)) must comply with the 2007 or later edition of NFPA 1971, Standard on Protective Ensemble for Structural Fire Fighting.

(b) Fire departments ((~~shall~~)) must establish a written policy and procedure for the care, use, maintenance and retirement criteria for helmets, following the manufacturer's recommendations.

(c) Helmet accessories ((~~shall~~)) must not interfere with the function of the helmet or its parts, and ((~~shall~~)) must not degrade the helmet's performance.

(d) Firefighters ((~~shall~~)) must follow the manufacturer's recommendations regarding inspection, cleaning, painting, marking, and storage of helmets.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02012 Body armor.** Fire departments that use protective body armor ((~~shall~~)) must comply with the following:

(1) If the employer's PPE assessment required by WAC 296-800-16005 documents a need for body armor, the employer must provide the necessary equipment and ensure that:

- (a) The body armor fits properly;
- (b) Employees are trained in the use and limitations of the body armor; and
- (c) The body armor is worn when necessary.

**Note:** Employees may exceed the minimum requirements for body armor if they choose.

(2) The fire department ((~~shall~~)) must develop and have in place written guidelines for the care, use and maintenance of the protective body armor in conjunction with the manufacturer's recommendations.

(3) All protective body armor purchased prior to the effective date of this standard ((~~shall~~)) must meet or exceed the April 1987 edition of National Institute of Justice NIJ 0101.03, threat level II requirements, or be demonstrated by the employer to be equally effective. All protective body armor purchased after the effective date of this standard must meet either the September 2000 edition of NIJ 0101.04, threat level II requirements or the June 2001 revision, NIJ 0101.04A. All body armor made of decertified materials as outlined in the 2005 edition of NIJ 0101.05 should be removed from service as soon as replacement body armor is available.

(4) Body armor ((shall)) must be correctly fitted following the manufacturer's recommendations and ((shall)) must not be used beyond the manufacturer's warranty.

**Note:** DOSH Directive 5.09, Body Armor as Personal Protective Equipment, can provide additional guidance regarding selection of body armor.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02017 Personal alert safety system (PASS) protection.** (1) Each firefighter engaged in structural firefighting requiring the use of SCBA ((shall)) must wear and use a PASS device. PASS devices ((shall)) must meet the requirements of the 1993 edition of NFPA 1982, Standard on Personal Alert Safety Systems (PASS) for Firefighters. (See WAC 296-305-07001 through 296-305-07018 for wildland firefighting application.)

**Note:** Fire departments should provide one spare PASS device for each ten units in service. If a department has less than ten devices they should have one spare.

(2) Each PASS device ((shall)) must be tested routinely to ensure it is ready for use and immediately prior to each use, and shall be maintained in accordance with the manufacturers' instructions.

(3) Fire departments ((shall)) must provide written procedures for the use of PASS devices.

(4) Fire departments ((shall)) must establish a written procedure for the care, use, maintenance, and repair of PASS devices in conjunction with manufacturer's recommendations.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02019 Life safety ropes, harnesses, and hardware protection.** (1) All previously purchased life safety ropes, harnesses, and hardware used by fire departments ((shall)) must meet the applicable requirements of the 2001 edition of NFPA 1983, Standard on Life Safety Rope and System Components. Ropes and equipment purchased after the effective date of this rule must meet the 2006 edition of NFPA 1983, Standard on Life Safety Rope and Equipment for Emergency Services.

(2) Ropes used to support the weight of members or other persons during rescue, firefighting, other emergency operations, or during training evolutions ((shall)) must be life safety rope.

(3) Life safety rope used for rescue at fires, or other emergency incidents, or for training, ((shall)) must be permitted to be reused if inspected before, and after, each such use in accordance with the manufacturer's instructions and provided:

(a) The rope has not been visually damaged by the exposure to heat, direct flame impingement, chemical exposure, or abrasion.

(b) The rope has not been subjected to any impact load.

(c) The rope has not been exposed to chemical liquids, solids, gases, mists, or vapors of any materials, known to deteriorate rope.

(d) If the rope used for rescue at fires or other emergency incidents, or for training, has been subjected to (a), (b), or (c) of this section, or fails the visual inspection, it ((shall)) must be destroyed after such use.

(e) If there is any question regarding the serviceability of the rope after consideration of the above, the safe course of action ((shall)) must be taken and the rope ((shall)) must be placed out of service. See Appendix B.

(f) Rope inspection ((shall)) must be conducted by qualified inspectors in accordance with rope inspection procedures established and recommended as adequate by the rope manufacturer to assure rope is suitable for reuse.

(4) Fire departments ((shall)) must establish written procedures for the use of life safety ropes and rescue operations utilizing harnesses and ropes.

(5) Records ((shall)) must provide a history of each life safety and training rope. The minimum information to be reflected in the record of history of life safety and training ropes ((shall)) must include: Date of manufacturer, organization serial number, date of use, type of use, date of inspection, inspectors name and space for comments.

(6) The destruction of a rope means that it ((shall)) must be removed from service and altered in such a manner that it could not be mistakenly used as a life safety rope. This includes disposal or removal of labels and cutting into short lengths to be used for utility purposes.

(7) All repairs to life safety harnesses ((shall)) must be done by an authorized manufacturer's representative, or the manufacturer.

(8) At a minimum, ladder belts ((shall)) must be used for firefighter attachment to ladders and aerial devices.

(9) Class II and Class III life safety harnesses ((shall)) must be utilized for fall arrest and rappelling operations. Class III harnesses ((shall)) must be used when the potential to become inverted exists.

(10) Life safety ropes ((shall)) must be padded when deployed over edges or rough surfaces.

**Note:** See WAC 296-305-05113 for rope rescue applications.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-02501 Emergency medical protection.** (1) Firefighters who perform emergency medical care or otherwise may be exposed to blood or other body fluids ((shall)) must be provided with emergency medical face protection devices, and emergency medical garments that meet the applicable requirements of the 1999 edition of NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations.

**Note:** Prior to purchase, fire departments should request the technical data package required in the 2003 edition of NAPA 1999, in order to compare glove and garment performance data. Departments reviewing these packages should ensure a relative ranking of the performance data before they purchase in order to provide the best performance of the EMS personal protective clothing.

(2) Firefighters ((shall)) must don emergency medical gloves and eye protection prior to initiating any emergency patient care.

(3) Firefighters ((shall)) must don emergency medical garments prior to any patient care during which splashes of body fluids can occur such as situations involving spurting blood or childbirth.

**Note:** Firefighter turnout gear and gloves with vapor barriers may be used in lieu of emergency medical gloves and garments.

(4) Contaminated emergency medical garments, emergency medical face and eye protection, gloves, devices, and emergency medical gloves ((shall)) must be cleaned and disinfected, or disposed of, in accordance with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.

(5) Fire departments ((shall)) must establish a designated infection (exposure) control officer who ((shall)) must ensure that an adequate infection control plan is developed and all personnel are trained and supervised on the plan.

(6) The infection control officer ((shall)) must be responsible for establishing personnel exposure protocols so that a process for dealing with exposures is in writing and available to all personnel.

(7) The infection control officer or ((his/her)) their designee will function as a liaison between area hospitals and fire department members to provide notification that a communicable disease exposure is suspected or has been determined by hospital medical personnel. The department infection control officer will institute the established exposure protocols immediately after report of an exposure. The infection control officer ((shall)) must follow the confidentiality requirements of chapter 246-100 WAC and the medical protocol requirements of chapter 296-802 WAC.

(8) Fire departments ((shall)) must have a written infection control plan which clearly explains the intent, benefits, and purpose of the plan. The written document must cover the standards of exposure control such as establishing the infection control officer and all members affected; education and training; documentation and record keeping; cleaning/disinfection of personnel and equipment; and exposure protocols.

(9) Policy statements and standard operating procedure guidelines ((shall)) must provide general guidance and specific regulation of daily activities. Procedures ((shall)) must include delegation of specific roles and responsibilities, such as regulation of infection control, as well as procedural guidelines for all required tasks and functions.

(10) Fire departments ((shall)) must establish a records system for members health and training.

(11) Firefighters ((shall)) must be trained in the proper use of P.E., exposure protection, post exposure protocols, disease modes of transmission as it related to infectious diseases.

(12) Infectious disease programs ((shall)) must have a process for monitoring firefighters compliance with established guidelines and a means for correcting noncompliance.

(13) Fire department members ((shall)) must be required to annually review the infectious disease plan, updates, protocols, and equipment used in the program.

(14) Fire departments ((shall)) must comply with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens, in its entirety.

(15) Tuberculosis (TB) exposure and respiratory protection requirements.

(a) Firefighters ((shall)) must wear a particulate respirator (PR) when entering areas occupied by individuals with suspected or confirmed TB, when performing high risk procedures on such individuals or when transporting individuals with suspected or confirmed TB in a closed vehicle.

(b) A NIOSH-approved, 95% efficient particulate air respirator is the minimum acceptable level of respiratory protection.

(i) Fit tests are required.

(ii) Fit tests ((shall)) must be done in accordance with chapter 296-842 WAC.

(c) Employee tuberculosis screening ((shall)) must be provided in accordance with current U.S. Centers for Disease Control and Prevention guidelines.

**Note:** If possible, the rear windows of a vehicle transporting patients with confirmed, suspected, or active tuberculosis should be kept open, and the heater or air conditioner set on a noncirculating cycle.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-03002 Hazardous materials.** (1) Fire department personnel involved in hazardous materials incidents ((shall)) must be protected against potential chemical hazards. Chemical protective clothing ((shall)) must be selected according to the technical data package provided by the clothing manufacturer and used to protect the skin, eyes, face, hands, feet, head and body.

(2) Fire departments must select, provide, and require the use of additional personal protective equipment as required in chapter 296-842 WAC, Respiratory protection.

(3) Hazardous chemical protective equipment ((shall)) must be classified by performance and is defined as:

(a) Vapor-protective suits (level A) meeting the criteria outlined in the 2000 edition of NFPA 1991, Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies.

(b) Liquid splash-protective suits (level B) meeting the criteria outlined in the 2000 edition of NFPA 1992, Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies.

(c) CBRN terrorism incident protective ensembles and ensemble elements meeting the criteria outlined in the 2001 edition of NFPA 1994, Standard on Protective Ensembles for First Responders to CBRN Terrorism Incidents.

(4) Vapor protective ensembles, liquid splash-protective ensembles, and CBRN protective ensembles ((shall)) must completely cover both the wearer and the wearer's respiratory protection unless the respiratory protection has been specifically designed by the manufacturer for that type of chemical exposure.

(5) Vapor protective suits and liquid splash-protective suits ((shall)) must not be used alone for any firefighting applications or for protection from radiological, biological, or cryogenic agents or in flammable or explosive atmospheres.

(6) Liquid splash-protective suits ((shall)) must not be used when operations are likely to result in significant exposure to chemicals or specific chemical mixtures with known or suspected carcinogenicity as indicated by any one of the

following documents if it can be reasonably expected that the firefighters in vapor-protective suits would be significantly better protected:

(a) Dangerous Properties of Industrial Chemicals, 10th edition-2000, N. Irving Sax.

(b) NIOSH Pocket Guide to Chemical Hazards, 2006 edition.

(c) U.S. Coast Guard Chemical Hazard Response Information System (CHRIS), Volume 13, Hazardous Chemical Data.

(7) Liquid splash-protective suits ~~((shall))~~ must not be used when operations are likely to result in significant exposure to chemicals or specific chemical mixtures with skin toxicity notations as indicated by the American Conference of Government Industrial Hygienists (ACGIH) Threshold Limit Values for Chemical Substances and Agents and Biological Exposure Indices for 2004 or 2007 if it can be reasonably expected that firefighters in vapor-protective suits would be significantly better protected.

(8) Firefighters assigned to functional support operations outside the hot zone during hazardous chemical emergencies ~~((shall))~~ must be provided with and ~~((shall))~~ must use personal protective garments appropriate for the type of potential chemical hazard exposure.

(9) Fire departments responding to uncontrolled release of hazardous materials must comply with chapter 296-824 WAC, Emergency response.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04001 Respiratory equipment protection.** (1) Firefighter's self-contained breathing apparatus (SCBA) ~~((shall))~~ must, at a minimum, meet the requirements of the 1997 edition of NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters. Equipment purchased after the effective date of this rule must meet the 2007 edition of NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Emergency Services.

(2) Closed circuit SCBA ~~((shall))~~ must:

- (a) Be positive pressure;
- (b) Be NIOSH certified; and
- (c) Have a minimum thirty-minute service duration.

(3) Members using ~~((SCBA's shall))~~ SCBAs must operate in teams of two or more.

(4) Except as otherwise provided in this chapter, fire departments ~~((shall))~~ must adopt, maintain and implement a written respiratory protection program that addresses the requirements of chapter 296-842 WAC, Respiratory protection. This includes program administration, medical limitations, equipment limitations, equipment selection, inspection, use, maintenance, training, fit testing procedures, air quality, and program evaluation.

**Note:** Additional information on respirators and respirator usage can be found in ANSI Z88.2 - American National Standard for Respiratory Protection and various NFPA publications (1981, 1404, 1500, etc.).

(5) Reserved.

(6) When the fire department makes its own breathing air or uses vendor supplied breathing air, they ~~((shall))~~ must maintain documentation certifying breathing air quality. The breathing air ~~((shall))~~ must:

(a) Be tested at least quarterly by using an air sample taken from the same outlet and in the same manner as the respirator breathing air cylinders are filled or air line respirators are connected.

(b) Meet the requirements of either the 2003 edition of NFPA 1989, Standard on Breathing Air Quality for Fire and Emergency Services Respiratory Protection or the 1997 edition of ANSI/CGA G6-1 - Commodity Specification for Air, with a minimum air quality of grade D.

(c) Meet a water vapor level of 24 ppm or less.

(7) Fit testing ~~((shall))~~ must be conducted in accordance with this section and chapter 296-842 WAC, Respiratory protection.

(a) Each new member shall be tested by a qualitative or quantitative method before being permitted to use SCBA's in a hazardous atmosphere.

(b) Only firefighters with a properly fitting facepiece ~~((shall))~~ must be permitted by the fire department to function in a hazardous atmosphere with SCBA.

(c) Fit testing ~~((shall))~~ must be repeated:

(i) At least once every twelve months.

(ii) Whenever there are changes in the type of SCBA or facepiece used.

(iii) Whenever there are significant physical changes in the user. Example: Weight change of ten percent or more, scarring of face seal area, dental changes, cosmetic surgery, or any other condition that may affect the fit of the facepiece seal.

(d) The fit testing is done only in a negative-pressure mode. If the facepiece is modified for fit testing, the modification ~~((shall))~~ must not affect the normal fit of the device. Such modified devices ~~((shall))~~ must only be used for fit testing.

(e) The fit test procedures and test exercises described in WAC 296-842-15005 and 296-842-22010 ~~((shall))~~ must be followed unless stated otherwise in this chapter.

(f) Respirator fit test records ~~((shall))~~ must include:

(i) Written guidelines for the respirator fit testing program including pass/fail criteria;

(ii) Type of respirator tested including manufacturer, model, and size;

(iii) Type of fit test and instrumentation or equipment used;

(iv) Name or identification of test operator;

(v) Name of person tested;

(vi) Date of test; and

(vii) Results of test.

**Note:** Firefighters should be issued individual facepieces.

(8) Facial hair, contact lenses, and eye and face protective devices.

(a) A negative pressure respirator, any self-contained breathing apparatus, or any respirator which is used in an atmosphere immediately dangerous to life or health (IDLH) equipped with a facepiece ~~((shall))~~ must not be worn if facial

hair comes between the sealing periphery of the facepiece and the face or if facial hair interferes with the valve function.

(b) The wearer of a respirator ((shall)) must not be allowed to wear contact lenses if the risk of eye damage is increased by their use.

(c) If corrective lenses must be worn with a facepiece, they ((shall)) must be worn so as to not adversely affect the seal of the facepiece to the face. See WAC 296-842-18005(3).

(d) Straps or temple bars ((shall)) must not pass between the seal or surface of the respirator and the user's face.

(9) At the end of suppression activities (to include fire overhaul) and before returning to quarters:

(a) Gross/field decontamination ((shall)) must be performed on firefighters prior to removal of their respirator whenever firefighting activities resulted in exposure to a hazardous substance.

(b) When exchanging air supply bottles during suppression or overhaul activities, reasonable precautions ((shall)) must be taken to maintain uncontaminated atmosphere to the breathing zone and facepiece supply hose.

(10) Self-contained respiratory equipment ((shall)) must be available and used by all firefighters who enter into hazardous atmospheres during structural firefighting activities.

(11) Reserved.

(12) Respirators ((shall)) must be provided for, and shall be used by, all personnel working in areas where:

- (a) The atmosphere is hazardous;
- (b) The atmosphere is suspected of being hazardous; or
- (c) The atmosphere may rapidly become hazardous.

**Reference:** See WAC 296-305-05002(13) for additional requirements.

(13) Reserved.

(14) Firefighters using a properly functioning SCBA ((shall)) must not compromise the protective integrity of the SCBA by removing the facepiece for any reason in hazardous atmospheres or in atmospheres where the quality of air is unknown.

(15) Firefighters ((shall)) must receive training for each type and manufacturer of respiratory equipment available for their use, the step-by-step procedure for donning the respirator and checking it for proper function. Required training ((shall)) must include:

- (a) Recognizing hazards that may be encountered;
- (b) Understanding the components of the respirator;
- (c) Understanding the safety features and limitations of the respirator; and
- (d) Donning and doffing the respirator.

(16) After completing such training, each firefighter ((shall)) must practice at least quarterly, for each type and manufacturer of respirator available for use, the step-by-step procedure for donning the respirator and checking it for proper function.

(17) Members ((shall)) must be tested at least annually on the knowledge of respiratory protection equipment operation, safety, organizational policies and procedures, and facepiece seals, to the fire department's standard. Such records ((shall)) must remain part of the member training file.

(18) Members ((shall)) must be allowed to use only the make, model, and size respirator for which they have passed a fit test within the last twelve months.

(19) In cases where there is a reported failure of a respirator, it ((shall)) must be removed from service, tagged and recorded as such, and tested before being returned to service.

(20) Firefighters ((shall)) must be thoroughly trained in accordance with the manufacturer's instructions on emergency procedures such as use of regulator bypass valve, corrective action for facepiece and breathing tube damage, and breathing directly from the regulator (where applicable).

(21) Reserved.

(22) SCBA cylinders ((shall)) must be hydrostatically tested within the periods specified by the manufacturer and the applicable governmental agencies.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04501 Automotive fire apparatus design and construction.** (1) All new fire apparatus with the exception of specialized equipment, ((shall)) must conform to the following minimum safety standards contained in the 2009 edition of NFPA 1901, Standard for Automotive Fire Apparatus, or the 2006 Edition of NFPA 1906, Standard for Wildland Fire Apparatus.

(2) Used fire apparatus, purchased after the effective date of this rule, weighing 10,000 pounds or more ((shall)) must conform with the following U.S. Department of Transportation standards, when applicable:

- (a) 49 C.F.R. Ch. V (10-03 edition) 571.121 "Air brake systems";
- (b) 49 C.F.R. Ch. V (10-03 edition) 571.106 "Brake hoses";
- (c) 49 C.F.R. Ch. V (10-03 edition) 571-103 "Hydraulic brake systems."

(3) Employers acquiring used apparatus or used equipment ((shall)) must not be required to bring it under a more stringent code than the one in force at the time the apparatus was manufactured. However, such vehicle must meet applicable U.S. Department of Transportation standards and chapter 296-865 WAC, Motor vehicles.

(4) Fire apparatus tailboards and steps ((shall)) must have a nonskid rough surface.

(5) Exhaust systems ((shall)) must be installed and maintained in proper condition, and ((shall)) must be so designed as to minimize the exposure of the firefighter to the exhaust gases and fumes.

(6) Spinner knobs ((shall)) must not be attached to the steering handwheel of fire apparatus.

(7) The transmission shifting pattern of the apparatus ((shall)) must be clearly stenciled or labeled and posted so it can be clearly read by the driver while operating the apparatus.

(8) The height of any apparatus, over seven feet in height from the ground to the top of the beacon or highest point of the apparatus, ((shall)) must be clearly labeled in a place where it can be easily and clearly read by the driver while operating the apparatus.

(9) All apparatus in excess of 10,000 pounds loaded weight, ((shall)) must have the weight of the vehicle in pounds and tons clearly labeled in a place where it can be easily and clearly read by the driver while operating the apparatus.

(10) All hoses and equipment ((shall)) must be secured to prevent unintentional or inadvertent deployment.

(11) Fire departments that purchase nonmotorized equipment to be used in emergency response situations on all roadways must comply with Title 46 RCW, Motor vehicles.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04503 Automotive fire apparatus equipment.** (1) Vehicles used to transport firefighters and employer representatives ((shall)) must have compartments for carrying sharp tools, saws, chisels, axes, etc., or if carried on the outside of the apparatus, equipment with sharp points and edges ((shall)) must be covered to prevent injury to firefighters and employer representatives.

(2) Personnel restraints for traveling.

(a) All persons riding on fire apparatus ((shall)) must be seated and secured to the vehicle by seat belts or safety harnesses at any time the vehicle is in motion.

(b) Seat belts ((shall)) must comply with U.S. Department of Transportation Part 49 C.F.R. Section 571, Standards 209 and 210.

(c) Riding on tailsteps or in any other exposed position such as sidesteps or running boards ((shall)) must be specifically prohibited.

(d) Standing while riding ((shall)) must be specifically prohibited.

(e) Members actively performing necessary emergency medical care while the vehicle is in motion ((shall)) must be restrained to the extent consistent with the effective provision of such emergency medical care. All other persons in the vehicle ((shall)) must be seated and belted in approved seating positions while the vehicle is in motion.

(f) Fire departments permitting hose loading operations while the vehicle is in motion ((shall)) must develop a written policy and guidelines addressing all safety aspects.

**Note:** Policy and operating guidelines should address:

- ((\*) 1. The assigning of a member as a safety observer who should have an unobstructed view of the hose loading operation and be in visual and voice contact with the driver.
- ((\*) 2. Allowed maximum fire apparatus speed when hose loading;
- ((\*) 3. Control of nonfire department vehicular traffic; and
- ((\*) 4. Allowing members in the hose bed, but limit standing to only when the vehicle is not moving.

**Note:** See WAC 296-305-07018(3) for exceptions for wildland vehicles.

(3) Each fire apparatus ((shall)) must carry a current U.S. Department of Transportation Emergency Response Guidebook in hardcopy or in electronic form for viewing on a digital reading device.

(4) Ladders stowed on the sides of apparatus, which protrude past the tailboard, ((shall)) must have guards over the protruding ends.

(5) No employer ((shall)) must permit automotive fire apparatus equipment which has an obstructed view to the rear, to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04505 Automotive apparatus operational rules.** (1) Each employer of staffed fire apparatus ((shall)) must establish a written policy and procedure whereby the apparatus has a scheduled daily operational check. Each employer of unstaffed fire apparatus ((shall)) must establish a schedule appropriate to that department's activities.

(2) Any item found to be in need of repair ((shall)) must be reported immediately to the officer in charge or other appropriate person.

(3) Firefighting apparatus ((shall)) must be brought to a full stop before employees are allowed to step from the apparatus.

(4) Firefighters ((shall)) must not be in the apparatus hose bed while hose is being run out from the bed.

(5) Headlights ((shall)) must be on at all times when any fire or emergency vehicle is responding to a call.

(6) All apparatus over 20,000 pounds (gross vehicle weight) ((shall)) must utilize wheel chocks, rated for the specific apparatus they are being used with, when parked at an emergency scene.

(7) Apparatus responding to alarms ((shall)) must meet specifications in RCW 46.61.035, relating to operations of authorized emergency vehicles.

(8) All operators of emergency vehicles ((shall)) must be trained in the operations of apparatus before they are designated as drivers of such apparatus. The training program ((shall)) must be established by each fire department. Once trained, all operators ((shall)) must familiarize themselves with any apparatus prior to operating such apparatus even for brief periods of time.

Additional Reference: Washington Fire Chiefs - Emergency Vehicle Incident Prevention (EVIP) program or other Washington state accredited program.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04507 Fire apparatus maintenance and repair.** (1) If at any time a fire apparatus is found to be in an unsafe condition, it ((shall)) must be reported immediately to the officer on duty.

(2) If in the driver or duty officer's determination, the apparatus cannot be used in a safe manner, it ((shall)) must be taken out of service until it has been restored to a safe operating condition.

(3) All repairs to the suppression components of emergency vehicles of the fire department ((shall)) must be done by an emergency vehicle technician, ASE certified technician

or factory qualified individual. Repairs, maintenance or routine work to nonsuppression systems of suppression apparatus or other fire department vehicles and their equipment ~~((shall))~~ must be done by personnel qualified in the specific area of repair. Fire service pumps with a capacity of 499 gallons per minute or less and not used for interior structural firefighting operations are exempt from this requirement.

(a) A preventive maintenance program ~~((shall))~~ must be instituted and records maintained for each individual apparatus in order to record and track potential or on-going problems.

(b) Apparatus ~~((shall))~~ must be maintained and tested in accordance with the manufacturer's recommendations.

**Note:** Additional information can be found in the 2007 edition of NFPA 1911, Standard for the Inspection, Maintenance, Testing and Retirement of In-service Automotive Fire Apparatus. Qualifications for persons working on emergency response vehicles can be found in the 2000 edition of NFPA 1071, Standard for Emergency Vehicle Technician Professional Qualification, A.1.1 and A.2.1.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-04510 Aerial apparatus.** (1) All new aerial devices ~~((shall))~~ must be constructed and initially tested in accordance with the 2009 edition of NFPA 1901, Standard for Automotive Apparatus.

(2) All aerial devices ~~((shall))~~ must be operated in accordance with the manufacturer's recommendations.

(3) All aerial devices ~~((shall))~~ must be maintained, tested and repaired in accordance with the manufacturer's instructions and nonconflicting portions of the 2002 edition of NFPA 1911, Standard for the Inspection, Maintenance, Testing and Retirement of In-Service Automotive Fire Apparatus.

(a) All devices, as well as the section of the apparatus which supports the turntable, ~~((shall))~~ must be inspected at least once every year.

(b) All devices, as well as the section of the apparatus which supports the turntable, ~~((shall))~~ must be nondestructively tested by a certified testing agency every five years.

(c) After any accident that causes structural damage, testing ~~((shall))~~ must be performed and all defects corrected before the apparatus is returned to service.

(4) Aerial devices ~~((shall))~~ must be used according to the following requirements:

(a) The number of firefighters permitted on aerial devices ~~((shall))~~ must be in accordance with the manufacturer's instructions.

(b) Aerial devices ~~((shall))~~ must not be positioned under dangerous cornices or other loose overhanging objects that may endanger firefighters and personnel working from or climbing the ladders, except where rescue operations are essential.

(c) When working near energized electrical lines, the following minimum working clearances for all equipment and personnel ~~((shall))~~ must be observed:

(i) For lines rated 50 kv or below, the minimum clearance between the lines and any part of the equipment ~~((shall))~~ must be ten feet.

(ii) For lines rated over 50 kv, the minimum clearance ~~((shall))~~ must be ten feet plus 0.4 inch (1 cm) for each 1 kv.

(iii) For low voltage lines (operating at 600 volts or less), the work ~~((shall))~~ must be performed in a manner to prevent the firefighters or equipment from contacting the energized conductor.

(d) Fire apparatus aerial devices ~~((shall))~~ must be positioned for the greatest stability feasible at the fire scene.

(e) The tip of the aerial device ~~((shall))~~ must not be forcefully extended against a solid structure.

**Note:** If allowed by manufacturer's recommendations, aerial devices may be utilized for ventilation in accordance with those recommendations.

(f) Aerial ladders ~~((shall))~~ must not be extended or retracted while firefighters are climbing the ladder.

(g) Locking in ~~((shall))~~ must not be permitted. If it is necessary for firefighters to be positioned on the aerial device, they ~~((shall))~~ must be secured by at least a ladder belt.

(h) Ladder pipes, when in use, ~~((shall))~~ must be secured to the aerial in such a manner so that the ladder pipe cannot accidentally be dislodged while in operation.

(i) The operator of an aerial device ~~((shall))~~ must remain on the turntable whenever firefighters are working from the aerial. If the aerial device is used only as a ground ladder, no operator is needed on the turntable.

(5) The following ~~((shall))~~ must regulate the design and use of the operating turntable and aerial device:

(a) Ladders ~~((shall))~~ must have nonskid protection on the rungs.

(b) Turntable controls and valves for rotating, extending or elevating the aerial device ~~((shall))~~ must be clearly and distinctly marked as to function.

(c) Aerial controls ~~((shall))~~ must be spring loaded and have a safety catch so that the controls ~~((shall))~~ will return to the neutral position if the operator is incapacitated.

(d) The operator of the aerial device ~~((shall))~~ must be provided with a nonskid surface on the turntable.

(e) A railing of approximately forty-four inches in height, and if possible, not less than thirty-six inches in length, ~~((shall))~~ must be installed on the turntable in back of the operator's position.

(f) A spotlight of not less than 75,000 candlepower (950,000 lumens) or a floodlight with not less than 850 cp (10,500 lumens) ~~((shall))~~ must be provided at the base to illuminate the aerial device at night in any position of operation.

(6) The following ~~((shall))~~ must regulate the communication systems on the aerial devices and on the automotive fire apparatus:

(a) A two-way voice communication system ~~((shall))~~ must be installed between the top fly of the ladder or platform and the lower control station.

(b) There ~~((shall))~~ must be some type of electrical signal or voice communication located in the tractor of tillered aerial for communication signals between the tillerman and driver. The apparatus ~~((shall))~~ must not be moved unless the proper signal, as shown in Appendix E, is received from the tillerman.

(7) The automotive fire apparatus used in conjunction with aerial devices ~~((shall))~~ must be used according to the following:

(a) Ground jacks or outriggers ~~((shall))~~ must be deployed before an aerial device is put into operation.

(b) Ground plates ~~((shall))~~ must be deployed under the outriggers or jacks at all times.

(c) Hand, airbrakes, and spring brakes ~~((shall))~~ must be set whenever an aerial device is in operation.

(d) In addition to ground jack supports and outriggers, wheel chocks ~~((shall))~~ must be used whenever the aerial device is in operation.

(e) Wheel chocks ~~((shall))~~ must be rated by the manufacturer of the chock for the apparatus it is to be used on.

(f) Sand or similar products ~~((shall))~~ must be put under jacks, outriggers, and ground plates when operating on ice or snow.

(8) Railings on elevated platforms ~~((shall))~~ must be constructed so that there is no opening greater than twenty-four inches below them.

(9) A plate ~~((shall))~~ must be located at the aerial device control units, clearly visible to the operator at the lower control position, listing the following information:

(a) Model and serial number of the manufacturer.

(b) Rated capacity of the platform.

(c) Operating pressure of the hydraulic and pneumatic systems.

(d) Cautions or restrictions of operation.

(e) Control instructions.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05000 Incident management.** (1) The fire department ~~((shall))~~ must establish an incident management system (IMS) consistent with the U.S. Department of Homeland Security National Incident Management System (NIMS) with written guidelines applying to all members involved in emergency operations.

(a) All members involved in emergency operations ~~((shall))~~ must be trained in the IMS system.

(b) Personnel ~~((shall))~~ must be trained and qualified by their department in the incident command system (ICS) that meets the requirements of NIMS prior to taking a role at an emergency scene.

(c) The incident management system ~~((shall))~~ must be applied to drills, exercises, and other situations that involve hazards similar to those encountered at actual emergency incidents and to simulated incidents that are conducted for training and familiarization purposes.

(2) At all emergency incidents, the incident commander ~~((shall))~~ must be responsible for the overall safety of all members and all activities occurring at the scene.

(3) All emergency incidents ~~((shall))~~ must be managed by an ICS; the incident commander ~~((shall))~~ must establish an organization with sufficient supervisory personnel to control the position and function of all members operating at the scene and to ensure that safety requirements are satisfied.

(4) At all emergency incidents, the incident commander ~~((shall))~~ must have the responsibility to:

(a) Assume and confirm command and take an effective fixed physical command position.

(b) Perform situation evaluation that includes risk assessment.

(c) Initiate, maintain, and control incident communication.

(d) Develop an overall strategy and incident action plan.

(e) Develop an effective ICS organization by managing resources, maintaining an effective span of control, and maintaining direct supervision over the entire incident by creating geographical and/or functional area supervisors as appropriate for the scope and size of the incident.

(f) Review, evaluate, and revise the incident action plan as required.

(g) Continue, transfer, and terminate command.

(5) The fire department ~~((shall))~~ must develop a risk management policy including rules of engagement that can be used by the incident commander in the development of incident strategies. The risk management policy should include direction and guidance to the incident commander in formulating incident planning relating to the level of risk that may be undertaken in any given incident to save lives and property in as safe a manner as dictated by the situation.

(6) The fire department ~~((shall))~~ must establish an accountability system: Written procedures and guidelines for tracking all members operating at emergency incidents.

(7) The incident commander ~~((shall))~~ must provide for control of access to hazardous areas of the incident scene. Procedures ~~((shall))~~ must identify methods for identification of hazardous areas and communication of necessary protective equipment and other protective measures necessary to operate in the hazardous area.

(a) Control zones ~~((shall))~~ must be established at emergency incidents.

(b) The perimeters of the control zones ~~((shall))~~ must be designated by the incident commander and communicated to all members.

(c) If the perimeters of the control zones change during the course of the incident, these changes ~~((shall))~~ must be communicated to all members on the scene.

(d) Hazard control zones ~~((shall))~~ must be designated as hot, warm, cold and exclusion zones.

(e) All members ~~((shall))~~ must wear the PPE (SCBA, flash hood, etc.) appropriate for the risks that might be encountered while in the hot zone.

(f) All members operating within the hot zone ~~((shall))~~ must have an assigned task.

(g) No unauthorized personnel ~~((shall))~~ must enter an exclusion zone that was designated due to the presence of imminent hazard(s) or the need to protect evidence.

(8) Firefighters operating in a hot zone ~~((shall))~~ must operate in teams of two or more regardless of rank or assignment. Members of these teams ~~((shall))~~ must be in constant communication with each other through touch, visual, or voice means in order to provide assistance in case of emergency.

(9) The fire department ~~((shall))~~ must provide personnel for the rescue of members operating at emergency incidents as the need arises.

(10) The fire department ~~((shall))~~ must develop and maintain written guidelines for the safety of members at incidents that involve violence, unrest, or civil disturbance. Such

situations may include, but not be limited to, riots, fights, violent crimes, drug related situations, family disturbances, deranged individuals, and people interfering with fire department operations.

(11) When members are operating at an emergency incident and their assignment places them in potential conflict with motor vehicle traffic, all reasonable efforts ~~((shall))~~ must be made to protect the members.

**Note:** Chapters 6H and 6I of the Manual on Uniform Traffic Control Devices, 2003 edition revision 1, provides information on how to set up traffic control zones during emergency operations on different types of roadways. This information can be accessed for free at the following link:  
<http://mutcd.fhwa.dot.gov/pdfs/2003r1/pdf-index.htm>.

(12) Responders ~~((shall))~~ must not manipulate equipment that they have not been trained or equipped to use.

(13) In the event a firefighter becomes lost, trapped, seriously injured, has a medical emergency, has exhausted their breathing air, or finds themselves in any other form of life threatening situation they ~~((shall))~~ must immediately call for help, using the nationally adopted term "Mayday" to declare that an emergency situation now exists. The fire department ~~((shall))~~ must specifically establish and routinely practice standard procedures for managing a Mayday situation.

(14) Emergency scene communications.

(a) Incident radio communication ~~((shall))~~ must use clear text terminology.

(b) Incident communication ~~((shall))~~ must use the phrase "emergency traffic" as the standard alert for all units operating on the scene to clear the air.

(c) The fire department ~~((shall))~~ must specifically establish and routinely practice standard procedures for managing an "emergency traffic" situation.

**Note:** The fire department communication center should start an incident clock when the first arriving unit is on scene of a working structure fire or when conditions appear to be time sensitive or dangerous. The dispatch center should notify the incident commander, at an interval established by their policy or procedure, until incident stabilization is achieved.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05002 Fire suppression.** (1) Before beginning interior structural firefighting operations, the incident commander must evaluate the situation and risks to operating teams.

(2) The "initial stages" of an incident ~~((shall))~~ must encompass the tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

(3) In the initial stages of an incident where only one crew is operating in the hot zone at a working structural fire, a minimum of four individuals ~~((shall))~~ must be required, consisting of two individuals working as a crew in the hot zone and two individuals present outside the hot zone available for assistance or rescue of firefighters during emergency operations where entry into the hot zone is required.

(4) Initial attack operations ~~((shall))~~ must be organized to ensure that if, on arrival at the emergency scene, responders find a known rescue situation where immediate action could prevent the loss of life or serious injury, such action ~~((shall))~~

must only be permitted when no less than three personnel (2-in/1-out) are present and equipped to provide emergency assistance or rescue of the team entering the hot zone.

No exception ~~((shall))~~ must be allowed when there is no possibility to save lives or no "known" viable victims.

(5) Firefighters must not engage in interior structural firefighting in the absence of at least two standby firefighters (2-in/2-out) except as provided in WAC 296-305-05002(4).

(6) Standby team members ~~((shall))~~ must comply with the following:

(a) Members ~~((shall))~~ must remain aware of the status of firefighters in the hot zone.

(b) Members ~~((shall))~~ must remain in positive communication (radio, visual, voice or signal line) with the entry team, in full protective clothing with respiratory protection donned while in standby mode.

(c) Only one standby team member may be permitted to perform other duties outside the hot zone, provided constant communication is maintained with the team in the hot zone, and provided that those duties will not interfere with his or her ability to initiate a rescue as appropriate.

(d) No standby team members ~~((shall))~~ must be permitted to serve as a standby member of the firefighting crew when the other activities in which the firefighter is engaged inhibit the firefighter's ability to assist in or perform firefighter rescue or are of such importance that they cannot be abandoned without placing other firefighters in danger.

**Note:** Nothing in this section ~~((shall))~~ will prevent actions which may reasonably be taken by members first on the scene to determine the nature and extent of fire involvement.

(7) Once a second crew arrives at the hot zone, the incident ~~((shall))~~ must no longer be considered to be in the "initial stage," and at least one rapid intervention crew should be assigned. For further guidance, see nonmandatory Appendix D.

(8) Teams in the hot zone ~~((shall))~~ must have positive communication capabilities with the incident command structure in place. Incident radio communication capabilities within the incident management structure ~~((shall))~~ must include monitoring the incident-assigned frequencies (including mutual aid radio frequencies).

(9) Officers at emergency scenes ~~((shall))~~ must maintain an awareness of the physical and mental condition of members operating within their span of control and ensure that adequate steps are taken to provide for their safety and health. The command structure ~~((shall))~~ must be utilized to request relief and reassignment of fatigued crews.

(10) Personal protective clothing/equipment designed for wildfire suppression ~~((shall))~~ must not be used for interior structural firefighting.

(11) Firefighters ~~((shall))~~ must not cut the electrical drip loop providing power to the structure nor pull the electrical meter.

(12) Prior to overhaul, buildings ~~((shall))~~ must be surveyed for possible safety and health hazards. Firefighters ~~((shall))~~ must be informed of hazards observed during the survey and measures ~~((shall))~~ must be taken to protect firefighters from these hazards.

(13) Self-contained breathing apparatus (SCBA) ~~((shall))~~ must be worn throughout overhaul. SCBA ~~((shall))~~

must also be worn during activities taking place in the area previously considered the hot zone after overhaul unless the officer in charge conducts an exposure evaluation to determine or reasonably estimate whether an employee is or could be exposed to either an airborne contaminant above a permissible exposure limit (PEL) listed in WAC 296-841-20025 Table 3 or other airborne hazards, such as biological/radiological/nuclear hazards. When the officer in charge cannot determine or reasonably estimate employee exposure they ~~((shall))~~ must conclude that an atmosphere is hazardous to the employees in accordance with WAC 296-842-13005.

(14) During the overhaul phase officers ~~((shall))~~ must identify materials likely to contain asbestos, limiting the breaching of structural materials to that which is necessary to prevent rekindle.

(15) Prior to removing firefighting ensembles worn in the hot zone, a gross decontamination ~~((shall))~~ must be performed to remove potentially harmful contaminants.

(16) Members of the department conducting post-fire investigations must comply with subsections (12) through (15) of this section.

(17) Employees working on, over, or along water where the chance of drowning exists ~~((shall))~~ must be provided with and ~~((shall))~~ must use approved personal flotation devices, unless it can be shown that conditions are such that flotation would not be achieved.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05004 Occupational exposure to heat and cold stress.** (1) Fire departments ~~((shall))~~ must develop written guidelines that outline a systematic approach for the rehabilitation of members operating at incidents and training exercises. The following components must be included in this guideline:

- (a) Supervisor's role in identifying climate conditions (hot or cold).
- (b) The signs and symptoms of heat or cold stress and how to identify them in subordinates and fellow members.
- (c) How to identify the climatic condition likely to produce heat or cold stress on members operating at emergency scenes or during training exercises.
- (d) What steps the incident commander (IC) must take when the climatic condition poses a heat or cold stress hazard to members.
- (e) What rest-to-work (recovery) schedule the IC must consider during climatic conditions that present a heat or cold stress hazard to members.

**Example:** NFPA 1584 states that after members use 2 30-minute SCBA bottles or 1 45-to-60-minute SCBA bottle or 40 minutes strenuous work without an SCBA the member should go to rehabilitation for a 10 to 20 minute rest and rehydrate.

(f) Which active or passive cooling and warming techniques will be used based on the incident type and climatic condition.

(g) What rehydration schedule will be followed, including the amount and type of fluids.

(h) What the department will do to ensure caloric replacement and electrolyte replacement during longer term emergencies and exercises.

(i) What medical monitoring will be provided to members in rehabilitation and what criteria will be used to release members from rehabilitation.

(j) What the IC will do when a member is showing signs of heat or cold stress after completing the department's rest-to-work cycle.

(k) What medical personnel will be present in rehabilitation to evaluate members sent to rehabilitation during the rest-to-work cycle.

To determine what temperature triggers action at each worksite, select the general type of clothing or personal protective equipment each employee is required to wear and find the corresponding temperature in Table 1.

**Table 1  
Outdoor Temperature Action Levels**

|  |     |
|--|-----|
| Nonbreathing clothing including vapor-barrier clothing or chemical resistant suits | 52° |
| Double-layer woven clothing including coveralls, jackets and sweatshirts           | 77° |
| All other clothing   | 89° |

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable in other states.

(2) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in Table 1:

- (a) The environmental factors that contribute to the risk of heat-related illness.
- (b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use.
- (c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks.
- (d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages.
- (e) The importance of acclimatization.
- (f) The different types of heat-related illness and their common signs and symptoms.
- (g) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in coworkers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in Table 1, supervisors must have training on the following topics:

- (a) The information required to be provided to employees listed in subsection (1) of this section.

(b) The procedures the supervisor must follow to implement the applicable provisions of this section.

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures.

(d) Procedures for moving or transporting an employee to a place where the employee can be reached by an emergency medical service provider if necessary.

(4) The fire department ((~~shall~~)) must rotate crews as necessary to allow for rehabilitation.

(5) All members ((~~shall~~)) must be provided training and information on how the body regulates core temperatures and how to recognize the signs, symptoms and controls for heat and cold stress.

(6) All members ((~~shall~~)) must be provided training on the department's guideline addressing heat and cold stress.

(7) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

(8) A rehabilitation area ((~~shall~~)) must be designated with features that provide shade or air conditioning with a place to sit for extremely hot environments.

(9) A rehabilitation area ((~~shall~~)) must be designated with features that provide dry protected areas out of the wind or rain and a heated area with a place to sit for extremely cold or wet environments.

(10) Multiple rehabilitation areas must be set up if the geographical area or size of the scene creates barriers limiting members' access to rehabilitation.

(11) The rehabilitation area ((~~shall~~)) must be of sufficient size to accommodate the number of crews using the area at the same time.

(12) Members entering the rehabilitation area that feel warm or hot ((~~shall~~)) must remove their personal protective clothing. Personnel trained in basic life support ((~~shall~~)) must evaluate the member and institute active or passive cooling as indicated.

(13) At a minimum, a person trained in basic life support with the knowledge and training needed ((~~shall~~)) must be located in the rehabilitation area to conduct medical monitoring and evaluation of crews entering the rehabilitation area.

(14) Members ((~~shall~~)) must not be released from rehabilitation until a person trained in basic life support okays their return to work.

(15) Supervisors ((~~shall~~)) must assess their crew at least every forty-five minutes and more frequently when climatic conditions warrant to determine their need for rehabilitation.

(16) Members on emergency scenes and during exercises ((~~shall~~)) must be provided a minimum of one quart of water per hour when the climatic conditions present heat or cold stress hazards. After one hour, caloric and electrolyte replacement must be considered.

(a) The employer((s)) must ensure that a sufficient quantity of drinking water is readily accessible to employees at all times.

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(c) Employers must encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(17) Employees showing signs or complaining of symptoms of heat-related illness must be relieved from duty, provided with a sufficient means to reduce body temperature, and monitored to determine whether medical attention is necessary.

**Note:** For further guidance, sample policies and information please consult the 2008 edition of NFPA 1584, Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises or the United States Fire Administration's Emergency Incident Rehabilitation Manual FA-314 issued February 2008.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05013 Aircraft rescue and firefighting.** (1) Fire departments that expect to respond to aircraft fires ((~~shall~~)) must meet the applicable portions of the 2008 edition of NFPA 402, Guide for Aircraft Rescue and Firefighting Operations.

(2) Airport based fire departments ((~~shall~~)) must meet the applicable portions of the 2008 edition of the NFPA 402, Guide to Aircraft Rescue and Firefighting Operations.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05101 Technical rescue general requirements.** (1) The following sections apply to fire departments that choose to operate for any type of technical rescue operations addressed in WAC 296-305-05113 at the following levels:

- Operations level. This level represents the capability of organizations to respond to technical rescue incidents and to identify hazards, use equipment, and apply limited techniques specified in this rule to support and participate in technical rescue incidents.
- Technician level. This level represents the capability of organizations to respond to technical rescue incidents, to identify hazards, use equipment, and apply advanced techniques specified in this rule necessary to coordinate, perform, and supervise technical rescue incidents.

**Note:** Awareness level represents the minimum capability of organizations that provide response to technical rescue incidents or discover technical rescue situations during emergency scene operations and takes no offensive action. This level requires no written procedures.

(2) Members ((~~shall~~)) must not operate at a level that exceeds the identified level of capability established in subsection (1) of this section.

(3) Basic life support ((~~shall~~)) must be provided by the fire department at technical rescue incidents.

(4) Fire departments must meet all requirements in this section, along with all relevant requirements in the specific technical rescue sections, before operating at the operations or technician level at a technical rescue incident.

(5) Fire departments choosing to not respond to technical rescue emergencies will ensure their employees can recognize when a technical rescue situation is present and what to do in those cases.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05103 Technical rescue training.** (1) Training ~~((shall))~~ must be provided to correspond to the operational level of the fire department. All fire departments which will be expected to perform at the operations level or higher operational level ~~((shall))~~ must be trained to that level.

**Note:** The 2008 edition of NFPA 1006, Standard for Technical Rescuer Professional Qualifications outlines the minimum individual Job Performance Requirements for Level I (Operations) and Level II (Technician) rescuers.

(2) Continuing education necessary to maintain all requirements of the level of capability ~~((shall))~~ must be provided by the fire department.

(3) The training program ~~((shall))~~ must be evaluated annually to ensure the fire department is prepared to function at the established operational level.

(4) All required training ~~((shall))~~ must be documented. Documentation ~~((shall))~~ must be maintained and available for inspection by employees, their representatives, and the department of labor and industries.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05105 Technical rescue standard operating procedure.** Fire departments that choose to operate above the awareness level for technical rescue incidents ~~((shall))~~ must establish written procedures outlining the operational level of their department that are specific to their chosen level of response and the type of technical rescue operations they plan to perform.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05107 Technical rescue incident response planning.** (1) Fire departments or a consortium of departments that choose to operate at the operations level or above ~~((shall))~~ must create a written special operations incident response plan for the specific type(s) of technical rescue at which they plan to operate at or above the operations level.

(2) When nonemergency resources may be required, procedures for acquisition of these resources for technical rescue incidents ~~((shall))~~ must be developed.

(3) Fire departments that choose to respond to chemical, biological, radiological, and nuclear (CBRN) incidents ~~((shall))~~ must provide training and equipment to all members expected to respond.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05109 Technical rescue equipment.**

(1) Equipment.

(a) Equipment necessary for operations at technical rescue incidents, along with training exercises, ~~((shall))~~ must be provided by the fire department.

(b) Training ~~((shall))~~ must be provided to ensure that all equipment is used and maintained according to the manufacturer's instructions.

(2) Personal protective equipment (PPE) specific to technical rescue.

(a) Departments will provide, at no cost to employees, protective clothing and equipment to provide protection from the specific hazards to which they could be exposed.

(b) Employees must be trained in the care, use, inspection, maintenance and limitations of the protective clothing and equipment.

(c) Employees are required to wear the protective clothing and equipment provided by the department's procedures and guidelines.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05111 Technical rescue safety.** (1) General.

(a) All employees must be trained on:

(i) The hazards and risks associated with department's chosen level of technical rescue operations.

(ii) How to conduct technical rescue operations at the department's chosen level while minimizing threats to rescuers.

(iii) How to use PPE.

(b) Employees assigned specific duties and functions must be trained and qualified by their department prior to being assigned those duties or functions.

(c) When employees are operating in positions or performing functions that pose a high potential risk for injury, employees qualified in basic life support must be standing by.

(2) Emergency evacuation. Departments ~~((shall))~~ must establish a procedure for members to abandon the technical rescue area and to account for their safety when an imminent hazard condition is discovered. This ~~((shall))~~ must include a method for notifying all members in the affected area immediately.

(3) Technical rescue safety officer. The incident commander ~~((shall))~~ must assign an incident safety officer with the requisite knowledge and responsibility for the identification, evaluation, and with the authority to correct hazardous conditions and unsafe practices, at all emergency scene operations and training exercises.

(4) Incident management. Departments ~~((shall))~~ must use an ICS at all technical rescue incidents and training exercises.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-05113 Technical rescue operational specialties.**

**Note:** When chapters of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, are required by the following sections, internal references requiring compliance with further NFPA's or additional resources are not included in these requirements.

(1) Structural collapse. Fire departments choosing to operate at the operations or technician level for structural collapse incidents must meet the requirements found in chapter 5 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(2) Rope rescue.

(a) Fire departments choosing to operate at the operations or technician level for rope rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 6 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Fire departments performing rope rescue operations must make sure previously purchased life safety ropes and equipment complies with the 2001 edition of NFPA 1983, Standard on Fire Service Life Safety Rope and System Components. Ropes and equipment purchased after the effective date of this rule must meet the requirements of the 2006 edition of NFPA 1983, Standard on Life Safety Rope and Equipment for Emergency Services.

(c) Life safety rope and rope rescue equipment ~~((shall))~~ must be inspected after purchase and prior to placing in service, after each use, and at least semiannually.

(d) Harnesses ~~((shall))~~ must be inspected for worn or broken stitching, rivets worn out of holes, and damage from abrasion, cuts, or chemicals.

(e) Descending/ascending hardware ~~((shall))~~ must be inspected for wear, cracks, distortion, sharp edges, and ease of operation.

(f) The manufacturer's recommended shelf life of life safety ropes ~~((shall))~~ must be followed. If no shelf life is specified, ropes greater than six years old ~~((shall))~~ must be taken out of service as a life safety rope.

**Note:** See WAC 296-305-02019, Life safety ropes, harnesses, and hardware protection, for further requirements.

(3) Confined space rescue.

(a) Fire departments choosing to operate at the operations or technician level for confined space rescue incidents must meet the requirements of this section, chapter 296-809 WAC Table 1, and the nonconflicting sections of chapter 7 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Fire departments ~~((shall))~~ must comply with chapter 296-809 WAC for their own confined spaces.

(c) Fire departments which will respond to calls to perform rescue from a permit-required confined space are required to have each member of a rescue team practice making permit space rescues at least every twelve months by means of simulated rescue operations in which they remove

dummies, mannequins or actual persons from permit space. A permit is required for the practice permit space entry.

(d) During an actual rescue response, written or verbally recorded hazard sizeup will be allowed in lieu of the written permit requirements in WAC 296-809-50004 and ~~((shall))~~ must be completed prior to any entry. This sizeup ~~((shall))~~ must include at a minimum:

(i) Recognition and declaration of the situation as a confined space incident.

(ii) Denial of entry to unprotected persons.

(iii) Assessment of all readily available confined space documentation, e.g., MSDSs, any existing permit, plans or blueprints of the space.

(iv) Assessment of number of victim(s), locations and injury conditions.

(v) Discussion with witnesses, supervisors, and other sources of information.

(vi) Assessment of any current or potential space hazards, in particular, any hazard(s) which lead to the necessary rescue.

(vii) Determination and declaration if the situation is a body recovery or a victim rescue.

(e) At confined space incidents, at least two people outside ~~((shall))~~ must be equipped with appropriate breathing apparatus to act as the back-up team, which ~~((shall))~~ must remain free of the contaminated area in order to rescue disabled firefighters.

(f) Written documentation of the rescue team's training on the fire department's confined space operating procedures, authorized entrant training, and the contracted host's confined space program ~~((shall))~~ must be kept. A record of each of the hazard sizeups ~~((shall))~~ must be maintained for at least one year.

(g) Anytime firefighters are working inside a confined space, such persons ~~((shall))~~ must be provided with SCBA or air line respirator with escape bottle, and ~~((shall))~~ must use the equipment unless the safety of the atmosphere can be established by testing and continuous monitoring.

(i) If the service life of the auxiliary air supply is fifteen minutes or less it ~~((shall))~~ must not be used for entry into an IDLH atmosphere but it may be used for escape purposes. The auxiliary air supply may be used for entry into an IDLH atmosphere only when the service life of the unit exceeds fifteen minutes and when not more than twenty percent of the noted air supply will be used during entry.

(ii) The maximum length of hose for supplied air respirators is three hundred feet (91 meters). Such hose ~~((shall))~~ must be heavy duty nonkinking and NIOSH approved.

(4) Machinery rescue. Fire departments choosing to operate at the operations or technician level for machinery rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 12 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(5) Water rescue.

(a) Fire departments choosing to operate at the operations or technician level for water rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 9 of the 2009 edition of NFPA 1670, Stan-

dard on Operations and Training for Technical Rescue Incidents.

(b) Organizations choosing to operate at the operations or technician level for dive rescue incidents must meet the requirements found in chapter 9 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(c) Fire departments choosing to operate at the operations or technician level for dive recovery incidents must meet the requirements found in chapter 296-37 WAC, Standards for commercial diving operations, and the nonconflicting parts of chapter 9 of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(d) If a manufacturer's specifications are such that an engineer is required for the operation of a vessel, one ~~((shall))~~ must be provided.

(e) When fire boats perform rescue activities they ~~((shall))~~ must have two dedicated personnel. Any member not specifically required to operate the vessel, e.g., an operator (pilot) or engineer (if required by the manufacturer's specification) may be used as a deck hand. This may include the boat officer if ~~((his/her))~~ their duties do not include operating the fire boat.

(f) Watercraft load capabilities ~~((shall))~~ must not exceed the manufacturer's specifications.

(g) Each fire department ~~((shall))~~ must determine the function of their watercraft; firefighting, rescue, or both.

(h) Watercraft operating within navigable waters of the state of Washington (as defined by the United States Coast Guard) ~~((shall))~~ must comply with all of the rules of the United States Coast Guard.

(i) Fire boats operating within navigable waters of the state of Washington (as defined by the United States Coast Guard) ~~((shall))~~ must have a fully dedicated pilot.

(j) The operator (pilot) of the watercraft is responsible for its safe operation.

(k) Training for all personnel ~~((shall))~~ must cover the physical characteristics of the vessel involved and ~~((shall))~~ must be included in the employer's accident prevention program.

(i) All assigned personnel ~~((shall))~~ must be trained in safe operation of watercraft and the operations the craft is intended to perform.

(ii) All employees involved in water rescue ~~((shall))~~ must be trained in water rescue techniques and use Coast Guard approved personal flotation devices, Type III, minimum.

**Exception:** Employees working below deck or in enclosed cabins or when working above, on or alongside still water where flotation would not be achieved, are exempt from this requirement.

(l) All employers operating watercraft in nonnavigable waters ~~((shall))~~ must be responsible for training all employees to local hazards.

(6) Trench and excavation rescue.

(a) Fire departments choosing to operate at the operations or technician level for trench and excavation rescue incidents must meet the requirements of this section and nonconflicting portions of chapter 11 of the 2009 edition of

NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) Employees that directly engage in trench rescue operations ~~((shall))~~ must be under the direct supervision of person(s) with adequate training in trench and excavation hazard recognition, equipment use and operational techniques.

(c) Each employee in an excavation ~~((shall))~~ must be protected from cave-ins by an adequate protective system except when:

(i) Excavations are made entirely in stable rock; or

(ii) Excavations are less than four feet (1.22 meters) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

(7) Mine and tunnel rescue.

(a) Fire departments choosing to operate at the operations or technician level for mine and tunnel rescue incidents must meet the requirements of this section and the nonconflicting portions of chapter 14 (Mine and Tunnel Search and Rescue) of the 2009 edition of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents.

(b) The requirements of this section ~~((shall))~~ apply to agencies that provide varying degrees of response to tunnels under construction or other underground excavations formerly classified as mines or tunnels.

(c) The requirements of this section ~~((shall))~~ do not apply to operating mines, tourist mines, basements, or subterranean structures that are complete and in use or that meet the definition of a confined space.

(d) Emergency services that are the designated primary provider of rescue services for operational mines and tunnels under construction are required to comply with the nonconflicting portions of chapter 296-155 WAC Part Q, Underground construction.

(e) Members who regularly enter a tunnel under construction as part of their regular duties ~~((shall))~~ must receive training meeting the requirements of the safety instruction required by WAC 296-155-730(3).

(f) Regardless of whether an atmospheric hazard is detected, any entrant into a tunnel under construction, mine or any related shaft or excavation ~~((shall))~~ must have a means of emergency egress respiratory protection with no less than a thirty minute rated service life immediately available. There ~~((shall))~~ must be at least one unit immediately available for each member in the tunnel.

MSHA or NIOSH approved "Self Rescuer" or "Self Contained Self Rescuer" devices fulfill this requirement provided the user has been trained in its use and the device is suitable for the type of potential hazards that may be encountered.

(g) A rescue service entry team ~~((shall))~~ must have the ability at a minimum to continuously monitor the air for oxygen, carbon monoxide, hydrogen sulfide, and combustible gasses as well as any other atmospheric contaminants that are known or suspected.

(h) The rescue service entry team ~~((shall))~~ must have at least two methods of communication with the surface, one of which ~~((shall))~~ must be voice communication.

This requirement may be satisfied by using both the "direct" and "trunked" features of the same radio systems provided adequate equipment is available to the entry team to

provide constant simultaneous communication using both methods.

(i) Rescue service entry teams that enter a mine or tunnel with a known atmospheric hazard ~~((shall))~~ must have a clearly defined "turnaround" benchmark to ensure adequate egress to an area of refuge or safety.

(j) Each rescue service entry team that enters a mine or tunnel with a known or suspected atmospheric hazard ~~((shall))~~ must have at least one source of breathable air independent of each wearer's SCBA to be used in the event of an SCBA failure or "out of air" emergency. This source of air is to be independent of any device brought in for the use of victims.

(k) A backup team with similar size and capabilities as the rescue service entry team ~~((shall))~~ must be immediately available to enter the space.

(l) Each member of the organization who is designated as part of the technician level rescue service ~~((shall))~~ must practice making mine or tunnel rescues as part of a rescue team no less than once every twelve months. This may be accomplished by means of simulated rescue operations in which the team removes dummies, mannequins, or persons from actual mines and tunnels or from representative mines and tunnels.

Representative mine and tunnels should, with respect to opening size, configuration, and accessibility, simulate the types of mines and tunnels from which rescue is to be performed.

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-305-05502 Training and member development.** (1) The employer must provide training, education and ongoing development for all members commensurate with those duties and functions that members are expected to perform.

(a) Training and education must be provided to members before they perform emergency activities.

(b) Fire service leaders and training instructors must be provided with training and education which is more comprehensive than that provided to the general membership of the fire department.

(c) The fire department ~~((shall))~~ must develop an ongoing proficiency cycle with the goal of preventing skill degradation.

(2) Training on specific positions/duties deemed by the fire department critical to the safety of responders and the effectiveness of emergency operations (such as driver operators or support personnel) ~~((shall))~~ must be provided at least annually.

(3) Firefighters ~~((shall))~~ must be trained in the function, care, use/operation, inspection, maintenance and limitations of the equipment assigned to them or available for their use.

(4) Members who are expected to perform interior structural firefighting ~~((shall))~~ must be provided with an education session or training at least quarterly.

(5) When firefighters are engaged in training above the ten-foot level, where use of lifelines or similar activities are to be undertaken, a safety net or other approved secondary

means of fall protection recommended in chapter 296-155 WAC, Part C-1, fall protection requirements for construction, ~~((shall))~~ must be used.

(6) Continuing education live fire training.

(a) All members who engage in interior structural firefighting in IDLH conditions ~~((shall))~~ must be provided live fire training appropriate to their assigned duties and the functions they are expected to perform at least every three years. Firefighters who do not receive this training in a three-year period will not be eligible to return to an interior structural firefighting assignment until they do. Responding to a fire scene with a full alarm assignment, an ICS established and a ~~((postincident))~~ post-incident analysis will meet this requirement, but for no more than two training evolutions.

(b) All live fire training ~~((shall))~~ must be conducted by fire department qualified fire service instructors. When conducting their own training, fire departments must meet the requirements set out in the 2007 edition of the NFPA 1403, Standard on Live Fire Training Evolutions.

(c) An incident safety officer ~~((shall))~~ must be appointed for all live fire training evolutions. The incident safety officer function ~~((shall))~~ must be filled by a person who is trained and qualified in the IMS/Incident safety officer duties and who is not responsible for any other function at the training evolution other than the role of incident safety officer.

(7) When using structures for live fire suppression training, activities ~~((shall))~~ must be conducted according to the 2007 edition of NFPA 1403, Standard on Live Fire Training Evolutions. When using structures for nonlive fire training, the following requirements ~~((shall))~~ must be met:

(a) All structures used for training must be surveyed for potential hazardous substances, such as asbestos, prior to the initiation of any training activities. The survey must comply with chapter 296-62 WAC Part I-1 and ~~((shall))~~ must be conducted by an AHERA accredited inspector and performed in accordance with 40 C.F.R. 763, Subpart E. If the hazardous substances or asbestos containing materials of > 1% asbestos are to be disturbed during any training activity they must be removed prior to beginning that activity. Removal of asbestos < or = 1% is not required prior to live fire training.

In live fire training structures where < or = 1% asbestos has been disturbed, the fire department will provide written notice to the owner/agent that asbestos has been disrupted and remains on-site.

For structures built before 1978, you must assume that painted surfaces are likely to contain lead and inform workers of this presumption. Surveys for lead containing paints are not required. Lead containing paints are not required to be removed prior to training activities.

If the training activity will not disturb the hazardous substance, the material must be clearly marked and all participants must be shown the location of the substance and directed not to disturb the materials.

(b) Acquired or built structures used for fire service training that does not involve live fire must be surveyed for the following hazards and those hazards abated prior to the commencement of training activities:

(i) In preparation for training, an inspection of the training building ~~((shall))~~ must be made to determine that the floors, walls, stairs and other structure components are capa-

ble of withstanding the weight of contents, participants and accumulated water.

(ii) Hazardous materials and conditions within the structure ~~((shall))~~ must be removed or neutralized, except as exempted in (a) of this subsection.

(~~(\*)~~) ~~(A)~~ Closed containers and highly combustible materials ~~((shall))~~ must be removed.

(~~(\*)~~) ~~(B)~~ Oil tanks and similar closed vessels that cannot easily be removed ~~((shall))~~ must be vented sufficiently to eliminate an explosion or rupture.

(~~(\*)~~) ~~(C)~~ Any hazardous or combustible atmosphere within the tank or other vessel ~~((shall))~~ must be rendered inert.

(~~(\*)~~) ~~(D)~~ Floor openings, missing stair treads or railings, or other potential hazards ~~((shall))~~ must be repaired or made inaccessible.

(iii) If applicable, floors, railings and stairs ~~((shall))~~ must be made safe. Special attention ~~((shall))~~ must be given to potential chimney hazards.

(iv) Debris hindering the access or egress of firefighters ~~((shall))~~ must be removed before continuing further operations.

(v) Debris creating or contributing to unsafe conditions ~~((shall))~~ must be removed before continuing further operations.

(c) Asbestos training. Firefighters must be provided asbestos awareness training, including communication of the existence of asbestos-containing material (ACM) and presumed-asbestos-containing material (PACM). Training ~~((shall))~~ must be provided prior to initial assignment and annually thereafter, and must include:

(i) The physical characteristics of asbestos including types, fiber size, aerodynamic characteristics and physical appearance.

(ii) Examples of different types of asbestos and asbestos-containing materials to include flooring, wall systems, adhesives, joint compounds, exterior siding, fire-proofing, insulation, roofing, etc. Real asbestos ~~((shall))~~ must be used only for observation by trainees and ~~((shall))~~ must be enclosed in sealed unbreakable containers.

(iii) The health hazards of asbestos including the nature of asbestos related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, hazards to immediate family, and the health basis for asbestos standards.

(iv) Instruction on how to recognize damaged, deteriorated, and delamination of asbestos-containing building materials.

(v) Decontamination and clean-up procedures.

(vi) Types of labels that are used within different industries to identify ACM or PACM that is present within structures. The labeling system the employer will use during training to identify asbestos and ACM/PACM during destructive drilling and training.

(vii) The location and types of ACM or PACM within any fire department owned or leased structures and the results of any "Good Faith Survey" done on fire department owned or leased structures.

(8) Asbestos exposure during destructive training activities. Fire department employees are exempt from the require-

ments of chapter 296-65 WAC and WAC 296-62-077, provided they comply with the following requirements:

(a) Fire departments must obtain a good faith asbestos inspection/survey from the property owner/agent prior to disturbing building materials. The good faith survey must comply with chapter 296-62 WAC Part I-1 and ~~((shall))~~ must be conducted by an AHERA accredited inspector and performed in accordance with 40 C.F.R. 763, Subpart E.

(b) Good faith surveys must be shared with all employers and employees prior to using any structure.

(c) Materials containing >1% asbestos must be marked by a system recognized by all members. ACM/PACM may not be disturbed prior to, or during training, or must be removed by a certified asbestos abatement contractor prior to training activities. The incident safety officer for the training must walk all participants through the structure and inform them of the location of all ACM/PACM and that this material is not to be disturbed. If the structure is used for a black-out drill, the incident safety officer must instruct members that ACM/PACM is present and take precautions to ensure these materials are not disturbed during the training. A walk through is not required for black-out drills.

(d) Destructive drilling must not occur in a structure until the fire department has received a good faith asbestos survey from the owner/agent and ensured that any ACM or PACM has been abated from substrates upon which destructive drill tasks are planned to be performed. All suspect asbestos materials designated for destructive drill tasks will be identified, evaluated and tested by an accredited AHERA lab.

(e) Materials containing < or = 1% asbestos must be labeled by a system recognized by all members. Prior to initiating any destructive drilling on materials containing < or = 1% asbestos, the incident safety officer for the training must walk all participants through the structure and inform them of the location of asbestos.

(f) Firefighters must wear SCBA and turnouts whenever exposed to asbestos.

(g) Firefighters must be provided gross decontamination at the drill site by rinsing/brushing the firefighters turnouts and SCBA with water.

(h) Hand tools and other asbestos contaminated equipment will be rinsed off prior to being returned to the apparatus or service. Tools and equipment that cannot be decontaminated on site must be placed in sealed containers until they can be decontaminated. Care must be taken to not spread the asbestos.

(i) PPE that may have been contaminated with asbestos must be cleaned in a manner recommended by the manufacturer and that prevents the exposure of the employee cleaning the PPE. PPE that cannot be cleaned on-site must be placed in sealed containers until they can be decontaminated.

(j) In structures scheduled for demolition, or that will be turned over to another employer, where < or = 1% asbestos has been disturbed, the fire department will provide written notice to the owner/agent that asbestos has been disrupted and remains on-site. The fire department will inform the owner/agent, in writing, that access to the property must be limited to the demolition or asbestos contractor.

(k) The fire department will secure the structure after all drills and at the conclusion of the use of the structure. Secur-

ing the structure may include but not be limited to locking or boarding up windows, doors, and wall and roof openings. The site of the structure may also require fencing. When asbestos material of < or = 1% has been disturbed by the fire department's drill activities, the site will be posted with warning signs. These signs will notify entrants onto the site that asbestos debris of < or = 1% has been left on the site. For fire department members who plan to enter the structure or the building footprint, the signs will state the necessity of full turn-outs and SCBA with decontamination procedures. The signs will also state that entry into the building or the building footprint is prohibited by any persons other than the fire department and the demolition/abatement contractor.

(9) Additional training. Training must be provided on topics according to the job duties and potential hazards as outlined in Table 2, Subject Specific Training.

| <b>Table 2<br/>Subject Specific Training</b>   |  |
|--|--|
| <b>Topic</b>   | <b>Training requirements found in:</b>   |
| HEALTH AND SAFETY  |  |
| Noise and hearing loss prevention  | <ul style="list-style-type: none"> <li>• Chapter 296-817 WAC, Hearing loss prevention (noise)</li> <li>• WAC 296-305-02004</li> </ul>  |
| Respiratory equipment  | <ul style="list-style-type: none"> <li>• Chapter 296-842 WAC, Respirators</li> <li>• WAC 296-305-04001</li> </ul>  |
| Employee right-to-know procedures  | <ul style="list-style-type: none"> <li>• WAC 296-901-14016 Employee information and training</li> </ul>  |
| Identification and handling of asbestos-containing materials likely to be encountered during a fire response | <ul style="list-style-type: none"> <li>• WAC 296-62-07722(5) as appropriate to asbestos encountered during a fire response, or EPA awareness level asbestos two hour training course</li> </ul>  |
| FIRE SUPPRESSION   |  |
| Overhaul procedures and operations   | <ul style="list-style-type: none"> <li>• WAC 296-305-05000 and 296-305-05002</li> </ul>  |
| Live fire training in structures   | <ul style="list-style-type: none"> <li>• NFPA 1403, Standard on Live Fire Training Evolutions, 2007 Edition</li> </ul>   |
| Wildland fires   | <ul style="list-style-type: none"> <li>• WAC 296-305-07010 through <del>((296-305-07019))</del> <u>296-305-07018</u></li> <li>• The National Wildfire Coordination Group (NWCG) firefighter II</li> <li>• All training for assigned wildland incident command positions must be completed prior to assignment by the IC</li> </ul> |

| <b>Table 2<br/>Subject Specific Training</b>   |   |
|--|---|
| <b>Topic</b>   | <b>Training requirements found in:</b>  |
| INCIDENT MANAGEMENT  |   |
| Incident management training   | <ul style="list-style-type: none"> <li>• National Incident Management System</li> <li>• NFPA 1561, Standard on Emergency Services Incident Management System, 2008 edition (available on-line)</li> </ul>   |
| EMERGENCY MEDICAL  |   |
| Emergency medical training   | <ul style="list-style-type: none"> <li>• WAC 296-305-02501</li> </ul>   |
| HAZARDOUS MATERIALS  |   |
| Hazardous materials training   | <ul style="list-style-type: none"> <li>• Chapter 296-824 WAC, Emergency response</li> <li>• Nonconflicting portions of NFPA 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition</li> </ul>  |
| TECHNICAL RESCUE   |   |
| Confined space entry and/or rescue   | <ul style="list-style-type: none"> <li>• Chapter 296-809 WAC, Confined spaces</li> <li>• WAC 296-305-05004</li> <li>• Nonconflicting portions of NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, 2004 edition</li> <li>• Nonconflicting portions of NFPA 1006, Professional Qualifications for Technical Rescue, 2008 edition</li> </ul> |
| Other technical rescue situations, such as rope, structural collapse, transportation/machinery, trench, water, and wilderness rescue | <ul style="list-style-type: none"> <li>• NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, 2004 edition</li> <li>• Nonconflicting portions of NFPA 1006, Professional Qualifications for Technical Rescue, 2008 edition</li> </ul>   |
| POSITION SPECIFIC DEVELOPMENT  |   |
| Aircraft   | <ul style="list-style-type: none"> <li>• NFPA 402, Guide for Aircraft Rescue and Firefighting Operations, 2008 edition</li> </ul>   |
| Driver training  | <ul style="list-style-type: none"> <li>• WAC 296-305-04505(8)</li> </ul>  |

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06001 Fire service equipment.** (1) All portable equipment ((shall)) must be inspected routinely to ensure that it is ready for use.

(2) Any defective equipment ((shall)) must be removed from service.

(3) Nylon utility straps or straps of equivalent strength should be used instead of hose belts. The utility strap ((shall)) must be of one-inch nylon, or equivalent belting, with a four-inch overlap and sewn with polyester thread and ((shall)) must measure at least 102 inches on the outside circumference.

(4) The load capacity ((shall)) must be stenciled on each portable jack and the load capacity ((shall)) must not be exceeded.

(5) The instruction plate on portable jacks ((shall)) must be maintained in a legible condition.

(6) Portable powered cut-off saws (rescue saws) ((shall)) must be used in accordance with the manufacturer's recommendations.

**Exception:** The lower blade guard described in WAC 296-807-12005 is not required on hand-held portable powered cut-off saws used by fire/rescue personnel for rescue procedures and/or roof ventilation for smoke removal, provided the operator is wearing appropriate eye, face, head, and body protection as specified in WAC 296-305-02001 through 296-305-02012. This exception also applies to qualified persons (e.g., instructors) wearing personal protective equipment as described herein to instruct personnel in safe roof ventilation/rescue techniques.

(7) When not in use, the cutting teeth on a chain saw ((shall)) must be covered either by an old section of hose, a wooden scabbard, or an equivalent method.

(8) All axes worn by employees ((shall)) must be provided with a scabbard to guard against injury from the blade and pick of the axe.

(9) The guards on smoke ejectors, as supplied by the manufacturer, ((shall)) must not be removed and the operator of the ejector ((shall)) must wear gloves.

(10) Acetylene cylinders. Handling, storage and utilization of acetylene in cylinders ((shall)) must be in accordance with the Compressed Gas Association Pamphlet G-1 - 2003 edition.

(11) Powder activated life-line guns and accessories ((shall)) must be stored in a box or container equipped with a lid or cover.

(a) The box ((shall)) must be kept closed when not in use.

(b) A loaded life-line gun ((shall)) must not be placed in the storage box.

(c) Instruction books, cleaning kits and hand tools needed for maintenance or breakdown purposes ((shall)) must be kept in the life-line gun storage box.

(d) The words "powder activated tool" ((shall)) must be conspicuously printed on the top of the storage box.

(12) Abrasive blades in storage, not on a saw, ((shall)) must be protected from contact with water, liquids, petroleum products and their fumes.

(13) Fiber rope that has been subjected to injurious chemicals or excessive heat ((shall)) must not be used for load carrying purposes.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06003 Testing fire service equipment.**

(1) All fire suppression and supply hose must be tested annually as well as when there is reason to believe the hose has been damaged. Testing ((shall)) must be in accordance with the 2003 edition of NFPA 1962, Standard for the Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose.

(2) Safety nets ((shall)) must be tested annually by dropping a weight of not less than 400 pounds from the highest point to be used above the net. The test weight object may consist of two tightly tied rolls of two and one-half inch hose, each 100 feet long, or any other object having similar weight and dimension.

(a) The net suspension system ((shall)) must be designed and constructed with a safety factor of four and as a minimum, ((shall)) must withstand the test loading without permitting contact between the net and any surface or object below the net.

(b) Forged steel safety hooks or shackles ((shall)) must be used to fasten the net to its supports.

(c) Training requiring safety net protection ((shall)) must not be undertaken until the net is in place and has been tested by the weight of three firefighters on the net.

(d) Safety nets ((shall)) must extend eight feet beyond the edge of the work surface.

(e) The mesh size of nets ((shall)) must not exceed six inches by six inches.

(f) All nets ((shall)) must meet accepted performance standards of 17,500 foot pounds minimum impact resistance as determined and certified by the manufacturer, and ((shall)) must bear a label of proof test.

(g) Edge ropes ((shall)) must provide a minimum breaking strength of 5,000 pounds.

(3) The method of testing a life line gun ((shall)) must be in accordance with the manufacturer's recommended procedure.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06006 Ground ladders.** This section establishes the minimum requirements for the construction, care and use of fire department ground ladders.

(1) New ground ladders purchased after the effective date of this chapter ((shall)) must be constructed and certified in accordance with the 2004 edition of NFPA 1931, Standard on Design and Design Verification Tests for Fire Department Ground Ladders.

(2) Firefighters ((shall)) must climb and descend ground ladders with the fly in, for safety purposes, when not in conflict with the manufacturer's recommendations. Even when ladders are routinely used in the fly-out configuration, in adverse conditions firefighters ((shall)) must be permitted to

climb and descend ground ladders with the fly in to assure secure footing.

(3) All ground ladders ~~((shall))~~ must be maintained in accordance with the manufacturer's recommendations and visually inspected at least once a month and after every use. The following ladder components ~~((shall))~~ must be visually inspected:

- (a) Heat sensor labels, if provided, for a change indicating heat exposure.
- (b) All rungs for snugness and tightness.
- (c) All bolts and rivets for tightness.
- (d) Welds for any cracks or apparent defects.
- (e) Butt spurs for excessive wear or other defects.
- (f) Halyards for fraying or breaking.
- (g) Roof hooks for sharpness and proper operation.
- (h) Beam and rungs for punctures, wavy conditions, worn serrations or deformation.
- (i) Surface corrosion.

(4) The following wood ladder components ~~((shall))~~ must be checked:

(a) Beams for dark streaks. When a wood ground ladder develops dark streaks in the beams, the ladder ~~((shall))~~ must be removed from service and service tested as specified in subsection (9) of this section.

(b) Loss of gloss on the protective finish of fiberglass or wood ladders, signifying damage or wear.

(5) Any sign of damage or defect during a visual inspection ~~((shall))~~ must be cause to remove the ladder from service until it has been repaired. Scratches and dents ~~((shall))~~ must not be cause for a ladder to fail a test if it passes the appropriate service test.

(6) If the heat sensor label has an expiration date, and that date has passed, the heat sensor label ~~((shall))~~ must be replaced.

(7) Whenever any ground ladder has been exposed, or is suspected of having been exposed to direct flame contact, or wherever the heat sensor label has changed to indicate heat exposure, the ladder ~~((shall))~~ must be service tested according to subsection (9) of this section.

(8) Temporary repairs ~~((shall))~~ must not be made to ground ladders.

(9) When ground ladders are tested, they ~~((shall))~~ must be tested in accordance with the strength service testing procedures of the 2004 edition of NFPA 1932, Standard on Use, Maintenance and Service Testing of In-Service Ground Ladders, section 7.2.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06008 Electrical.** (1) Temporary power and lighting with the use of 110 - 120 VAC and 220 - 240 VAC equipment.

(a) All lighting equipment ~~((shall))~~ must be provided with heavy duty flexible cords with SO or SJ jackets or equivalent. All lighting equipment ~~((shall))~~ must be used with heavy duty flexible extension cords rated for the intended load with SO or SJ jackets or equivalent.

(b) Flexible cords and cables ~~((shall))~~ must be approved and suitable for conditions of use and location.

(c) Flexible cords ~~((shall))~~ must be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(d) Flexible cords ~~((shall))~~ must be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws.

(e) Flexible cords and cables ~~((shall))~~ must be protected from accidental damage. Sharp corners and projections ~~((shall))~~ must be avoided. Where passing through doorways or other pinch points, flexible cords and cables ~~((shall))~~ must be provided with protection to avoid damage.

(f) The path to ground from power cords, equipment, and temporary lights ~~((shall))~~ must be continuous.

(g) Electrical equipment, tools, and temporary lights that are used in wet or damp locations or other hazardous atmospheres ~~((shall))~~ must be approved for the purpose.

(h) Electrical equipment, tools, and temporary lights ~~((shall))~~ must be constructed so that water cannot enter or accumulate in wireways, lampholders or other electrical parts.

(i) Electrical equipment, tools, and temporary lights that are used in wet or damp locations or hazardous atmospheres ~~((shall))~~ must have 120 VAC single-phase 15 or 20 amp in-line resettable ground fault circuit interrupters.

(j) Temporary lights ~~((shall))~~ must be equipped with a handle and be insulated from heat and possible electrical shock.

(k) Temporary lights ~~((shall))~~ must not be suspended by their electrical cords unless cords and lights are designed and labeled for this means of suspension.

(l) Temporary lights ~~((shall))~~ must be protected by guards of a nonconductive or insulated material to prevent accidental contact with the bulb.

(2) 120 VAC cord reels ~~((shall))~~ must be approved for use in wet or damp locations or hazardous atmospheres.

(a) Bodies and caps ~~((shall))~~ must be weather tight, 15 amp rated at 120 VAC.

(b) Cords on cord reels that do not exceed one hundred fifty feet in length ~~((shall))~~ must be SO or SJ type jackets or equivalent.

(c) Cords that exceed one hundred fifty feet in length on reels, ~~((shall))~~ must have 10-gauge conductors.

(d) Cord reels that are not permanently mounted on a vehicle ~~((shall))~~ must be insulated from the ground when in use.

(3) 12-volt portable type hand lanterns ~~((shall))~~ must be constructed of molded composition or other type approved for the purpose.

(a) Portable hand lanterns used in wet or damp conditions or other hazardous atmospheres ~~((shall))~~ must be operated at a maximum of 12 volts.

(b) Hand lamps ~~((shall))~~ must be equipped with a handle and a substantial guard over the bulb and attached to the lampholder.

(4) Portable and vehicle-mounted generators.

(a) Portable generators. Under the following conditions, the frame of a portable generator ~~((shall))~~ is not ~~((be))~~

required to be grounded and ~~((shall))~~ must be permitted to serve as the grounding electrode for a system supplied by the generator:

(i) The generator supplies only equipment mounted on the generator or cord-connected and plug-connected equipment through receptacles mounted on the generator, or both; and

(ii) The noncurrent-carrying metal part of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(b) Vehicle-mounted generators. Under the following conditions, the frame of a vehicle may serve as the grounding electrode for a system supplied by a generator located on the vehicle:

(i) The frame of the generator is bonded to the vehicle frame;

(ii) The generator supplies only equipment located on the vehicle and/or cord-connected and plug-connected equipment through receptacles mounted on the vehicle or on the generator; and

(iii) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(5) Electrical equipment used in classified locations must conform to the requirements set out in WAC ~~((296-24-95613))~~ 296-24-95711, Hazardous (classified) locations. Definitions pertaining to classified locations can be found in WAC ~~((296-24-95604))~~ 296-24-990.

Additional references: Article 250 National Electrical Code. Chapter 296-24 WAC, Part L and WAC 296-800-280.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06503 General requirements.** (1) Stations and administrative offices ~~((shall))~~ must comply with the requirements of the general occupational health standards, WAC 296-800-210, Lighting in the workplace.

(2) Every new fire station, whether manned or unmanned, ~~((shall))~~ must be equipped with an approved emergency lighting system that will light dormitories, hallways, and apparatus bay areas in case of electrical power failure.

(3) New fire stations or new additions to an existing fire station that incorporate sliding poles or slides in their design or construction must meet the following requirements:

(a) The sliding pole floor opening will be enclosed by walls with access provided to the floor opening only through a door.

(b) The door will have a latch or knobs no lower than five feet from the floor.

(c) The door will be equipped with a system that will automatically keep the door locked unless an alarm requiring a response sounds in the fire station. This automatic lock system will allow for a manual override, which will be used only to enable inspection, maintenance, repair or replacement of the sliding pole, the enclosure, the door, or other features of the sliding pole system. The automatic lock system will feature a warning light above or adjacent to the door that will indicate when the door is unlocked.

(d) Permanent illumination which cannot be manually turned off will be provided in the pole hole.

(e) The automatic lock system will be subject to monthly inspections.

(f) The sliding pole floor opening will be illuminated constantly in a manner that cannot be overridden manually, except as needed for inspection, repair, maintenance, or replacement.

(g) The bottom of the sliding pole will be cushioned by a minimum three-foot diameter rubber mat or its equivalent.

(h) Nothing will be stored or placed at the bottom of the sliding pole for a radius of three feet from the pole.

(i) Doors will not protrude within three feet of the pole.

(j) Proper sliding pole use will be included as part of the formal firefighter training program.

(4) The requirements of chapter 296-878 WAC, window cleaning, ~~((shall))~~ must be followed when employees are engaged in window washing operations.

(5) All new fire stations and other new fire department facilities which contain sleeping quarters ~~((shall))~~ must be fully protected with automatic sprinkler systems.

(6) All existing fire stations and existing fire department facilities with sleeping quarters, that undergo a major renovation that consists of more than sixty percent of the assessed evaluation of the existing structure ~~((shall))~~ must be fully protected with automatic sprinkler systems.

(7) Eye protection ~~((shall))~~ must be worn when charging, changing or adding fluid to storage batteries. Personnel that will be charging storage batteries ~~((shall))~~ must be qualified to perform this function by the employer. See WAC 296-800-16050.

(8) Stairway tread ~~((shall))~~ must be of a nonskid design. Examples of nonskid: Grip strut grating, serrated edge grating, metal grating, aluminum safety tread, abrasive metal stair tread, or pressure sensitive nonskid type.

(9) In existing facilities where sliding poles or slides are used, the pole or slide hole ~~((shall))~~ must be guarded in such a manner as to prevent anyone from walking directly into the pole or slide hole opening.

(10) To absorb the shock to sliding employees, the bottom of all slide poles or slides ~~((shall))~~ must have a three-foot diameter cushioned rubber mat, or its equivalent.

(11) Nothing ~~((shall))~~ must be stored or placed at the bottom of a pole or slide hole for a radius of three feet from the pole. Doors ~~((shall))~~ must not protrude within three feet of the pole or slide.

(12) Stair and landing protection: Stairways, guardrails, landings, and handrails ~~((shall))~~ must be constructed to the requirements of chapter 19.27 RCW the State Building Code Act, and WAC 296-800-250.

(13) A standard guard railing for a landing platform ~~((shall))~~ must include a toeboard, which is a vertical barrier, at floor level erected along exposed edges of a floor opening, wall opening, platform, runway or ramp to prevent falls of material.

(14) Any new facility, or addition, alteration, or repair to an existing facility ~~((shall))~~ must be in compliance with chapter 19.27 RCW, the State Building Code Act.

(15) New stations containing a kitchen, and station kitchens remodeled after the date of this chapter, ~~((shall))~~ must

have an alarm activated service disconnect of fixed cooking appliances.

(16) Asbestos in facilities, buildings, and properties used by fire departments.

(a) Fire department employees ~~((shall))~~ must be informed of the presence and location of asbestos-containing material (ACM) and presumed-asbestos-containing material (PACM) in areas of buildings where employees work.

(b) Damaged and deteriorating asbestos in fire stations and facilities must be repaired, removed, enclosed or encapsulated.

(c) ACM and PACM in fire stations and facilities ~~((shall))~~ must be labeled according to WAC 296-62-07721(6).

(d) WAC 296-62-07723, Housekeeping, ~~((shall))~~ must apply to fire stations and facilities.

(e) Fire departments that do not comply with this section must comply with the requirements relating to asbestos set out in chapters 296-62 and 296-65 WAC.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06505 Sanitation, disinfection, cleaning, and storage areas.** (1) Fire departments ~~((shall))~~ must provide facilities for disinfecting, cleaning, and storage.

(2) A designated cleaning area ~~((shall))~~ must be provided for under the fire department's exposure control plan for the cleaning and disinfecting of protective equipment, portable equipment, and other clothing.

(a) Fire departments that engage in emergency medical operations ~~((shall))~~ must provide or have access to disinfecting facilities for the cleaning and disinfecting of emergency medical equipment.

(b) Disinfecting ~~((shall))~~ must not be conducted in fire station kitchen, living, sleeping, or personal hygiene areas.

(c) Disinfecting facilities in fire stations ~~((shall))~~ must be vented to the outside environment, and designed to prevent contamination of other fire station areas.

(d) The disinfecting facility ~~((shall))~~ must contain a sink with hot and cold water faucets. All surfaces ~~((shall))~~ must be nonporous surfaces.

(e) Handwashing facilities ~~((shall))~~ must be readily accessible to members. Handwashing facility means a facility providing an adequate supply of running potable water, soap and single use towels or hot air drying machines. When provision of handwashing facilities is not feasible, the employer ~~((shall))~~ must provide either an appropriate antiseptic hand cleaner in conjunction with clean cloth/paper towelettes or antiseptic towelettes.

(3) Protective clothing or equipment that is contaminated or potentially contaminated ~~((shall))~~ must not be allowed in any kitchen, living, sleeping, personal hygiene or other non-work area.

(4) The designated cleaning area ~~((shall))~~ must be physically separate from areas used for food preparation, cleaning of food and cooking utensils, personal hygiene, sleeping, and living areas.

(5) Drying areas for protective clothing ~~((shall))~~ must be well ventilated.

(6) Storage areas: Emergency medical supplies and equipment stored in fire stations, other than that stored on vehicles, ~~((shall))~~ must be stored in a dedicated enclosure and maintained per manufacturer's instructions.

(7) Reusable emergency medical supplies and equipment, protective clothing, and protective equipment ~~((shall))~~ must not be stored in kitchen, living, sleeping, or personal hygiene areas, nor ~~((shall))~~ must it be stored in personal clothing lockers.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06507 Sleeping areas.** (1) All sleeping areas in fire stations ~~((shall))~~ must be separated from vehicle storage areas by at least one-hour fire resistive assemblies.

(2) Sleeping areas ~~((shall))~~ must be protected by smoke and carbon monoxide detectors.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-06509 Apparatus areas.** (1) Three feet of clearance ~~((shall))~~ must be maintained around apparatus parked within the station where the station's width permits.

(2) All fire stations built after December 17, 1977, ~~((shall))~~ must have a minimum of three feet of clearance around the apparatus, which ~~((shall))~~ must be maintained free of any storage or obstruction.

(3) The station's apparatus floors ~~((shall))~~ must be kept free of grease, oil, water and tripping hazards.

(4) Floors ~~((shall))~~ must have slip-resistant surfaces on areas where personnel would normally mount or dismount apparatus.

(5) No Class I or Class II flammable liquids ~~((shall))~~ must be used for cleaning purposes to remove grease or dirt from apparatus.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06511 Indoor air quality.** Air quality ~~((shall))~~ must be consistent with chapter 296-841 WAC, Airborne contaminants, and WAC 296-800-240, Environmental tobacco smoke.

(1) If indoor air monitoring indicates over-exposure to contaminant ~~((PEL's))~~ PELs, engineering controls ~~((shall))~~ must be utilized to reduce firefighter exposure to the lowest feasible level.

(2) All fixed internal combustion equipment such as, but not limited to emergency generators, ~~((shall))~~ must be effectively exhausted to the exterior of the fire stations.

(3) All facilities dedicated to the maintenance and repair of internal combustion equipment ~~((shall))~~ must have means for effective ventilation to the exterior of the building.

(4) All new fire stations ~~((shall))~~ must be designed and constructed to conform to ACGIH ventilation recommended criteria for exhaust of internal combustion engines.

Additional reference: Industrial Ventilation Manual of Recommended Practices ISBN No.: 0-936712-65-1.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06513 Refueling areas.** (1) Refueling pumps, if installed, ~~((shall))~~ must be in accordance with the provisions of the International Fire Code and WAC 296-24-33015.

(2) Dispensing of Class 1 liquids ~~((shall))~~ must be as required in the International Fire Code.

(3) Spillage of oil or fuel ~~((shall))~~ must be properly disposed of or completely evaporated and the fuel tank cap replaced before restarting engine.

(4) Fueling areas ~~((shall))~~ must be posted - "NO SMOKING - STOP YOUR MOTOR."

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06515 Hose drying towers.** (1) The floor openings on hose tower platforms ~~((shall))~~ must be equipped with a forty-two inch guardrail with ~~((mid-rail and shall))~~ midrail and must be capable of withstanding a force of 250 pounds applied in any direction at any point on the top rail. The work platform ~~((shall))~~ must be equipped with toe-boards.

(2) The requirements for offset ladder platforms and ladder cage guards, when ladders extend beyond twenty feet, ~~((shall))~~ must apply to hose drying towers.

(3) Ropes and attachments used to hoist hose in the hose towers ~~((shall))~~ must have a breaking strength of 1500 pounds for a safe load strength of 300 pounds (five-to-one safety factor).

(4) Approved head protection ~~((shall))~~ must be worn by all persons in the hose tower whenever hose handling/hanging operations are taking place.

(5) Ropes utilizing a pulley block ~~((shall))~~ must be appropriately sized for the sheave to prevent possible jamming or damage to the rope.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06517 Drill tower training facilities.**

(1) Permanent fixed ladders on the outside of drill towers and drill buildings are exempt from the requirements of offset platform landings and ladder cage guards.

(2) Drill tower construction and operations ~~((shall))~~ must comply with the following:

(a) Burn buildings used for live fire training ~~((shall))~~ must be engineered for such use.

(b) Drill towers ~~((shall))~~ must not be used for live fire training except when burn rooms are provided.

(c) Burn rooms, if included in the building, ~~((shall))~~ must be engineered into drill towers.

(d) All walking surfaces in the drill tower ~~((shall))~~ must be slip resistant.

(e) Railings ~~((shall))~~ must be designed with a four-to-one safety ratio for 250 pound firefighters who may be operating a charged hose line on the fire escape.

(f) Rappelling anchors ~~((shall))~~ must be engineered to support 5000 pounds per person supported by the anchor.

(g) Rappelling anchors ~~((shall))~~ must be readily identifiable.

(h) Rappelling anchors ~~((shall))~~ must be certified by a structural engineer.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-06519 Fire station equipment and tools.** (1) Equipment and tools in maintenance shops ~~((shall))~~ must be guarded as required by the guarding provisions of chapter 296-806 WAC, Machine safety, and chapter 296-807 WAC, Portable power tools.

(2) Exposure of fan blades. When the periphery of the blades of a fan is less than ten feet above the floor or working level, the blades ~~((shall))~~ must be guarded. The guard ~~((shall))~~ must have openings no larger than one-half inch. This provision ~~((shall))~~ does not apply to residential ceiling fans.

(3) Abrasive wheels and grinders.

(a) All abrasive wheels and grinders, ~~((shall))~~ must be guarded as required by chapter 296-806 WAC, Machine safety.

(b) Goggles or face shields ~~((shall))~~ must be used when grinding.

(c) Abrasive and composite blades ~~((shall))~~ must be stored and protected against exposure to fuel and oil.

(d) Work rests on bench mounted abrasive wheel grinders ~~((shall))~~ must be used to support the work. These ~~((shall))~~ must be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests ~~((shall))~~ must be kept adjusted sufficiently close to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest. Adjustment of the work rest ~~((shall))~~ must not be made while the wheel is turning.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07001 Wildland fire operations.** Definitions:

**Urban wildfire(☺).** An uncontained fire requiring suppression action usually spreading through ground cover, vegetative fuels, brush, grass, and landscaping; often threatening residential and commercial structures within an urban environment with access to established roadways and water systems.

**Wildland firefighting(☺).** The activities of fire suppression and property conservation in woodlands, forests, grasslands, brush, and other such vegetation or any combination of vegetation that is involved in a fire situation but is not within buildings or structures.

~~((+))~~ (a) WAC 296-305-07010 through 296-305-07018 ~~((shall))~~ must only apply to personnel and agencies called on to provide services at any fire defined as a "wildland fire."

~~((2))~~ (b) Employers ~~((shall))~~ must provide, at no cost to the employee, the protective equipment and protective clothing required by this chapter. Personnel performing suppression actions on a wildland fire ~~((shall))~~ must wear and main-

tain the provided protective equipment and clothing as directed by their department's procedures and guidelines.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07002 Wildland fire personnel accountability.** (1) Urban wildfire and wildland firefighters ((shall)) must not be required to wear personal alerting devices except when wearing self-contained respiratory equipment.

(2) An officer ((shall)) must maintain positive communication with any individual during those times that the member is assigned an ancillary firefighting task (examples would include, but are not limited to, scout, incident safety officer, or lookout).

(3) Urban wildfire and wildland firefighters engaged in direct fire attack ((shall)) must work in teams of two or more unless they are in visual or voice contact with an officer.

(4) On initial attack fires, the incident commander ((shall)) must maintain the name and location of all personnel on the incident.

(5) On extended attack fires, the incident commander ((shall)) must:

(a) Ensure the maintenance of the name and location of all personnel within their unit, division, or branch.

(b) Transfer/confirm personnel and unit information to the appropriate incident command system (ICS) staff as soon as possible.

(c) Announce transfer of command to all on scene.

(d) Ensure that personnel and unit information is recorded in the command post as soon as possible.

(6) When a fire "blows up" or makes a run that crosses planned control lines, officers with affected crews ((shall)) must conduct an accounting of all personnel assigned to fire suppression and report any missing personnel to the incident commander.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07004 Heat-related illness prevention for wildland firefighters.** (1) At all wildland fires, members ((shall)) must be provided with a minimum of one quart per hour of electrolyte drinks or potable water.

(2) Officers at wildland fires ((shall)) must be trained in the symptoms of heat-related disorders and ((shall)) must observe their crews for such behavior. Appropriate action ((shall)) must be taken in the event a crew member displays such symptoms.

(3) At all wildland fires, the incident commander ((shall)) must consider the circumstances of the incident and make adequate provisions early in the incident for the rest, rehabilitation and hydration of all members operating at the scene. These provisions ((shall)) must include fluid replenishment; other factors to consider are the extremes of the climatic conditions and other environmental factors that increase the firefighter's heat stress.

(4) One hour is the maximum time that individuals can work in high temperatures in structural protective clothing. Agencies may substitute crews to avoid the one-hour bench

mark or increase crew size to complete the job in less than one hour.

(5) Members may be reassigned to return to duty throughout the incident cycle once a work-to-rest ratio (company and crew) rehabilitation rotation has been established.

**Note:** WAC 296-305-05004, Occupational exposure to heat and cold stress, may be of assistance while developing a plan, establishing training topics, and identifying environmental factors to consider for incident rehabilitation. The 2008 edition of NFPA 1584, Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises may also assist in establishing a rehabilitation plan.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07006 Equipment for wildland firefighting.**

**Note:** Equipment is considered in this section as those items not configured as a part or portion of the vehicle body.

(1) All equipment on an apparatus ((shall)) must be carried in an enclosed compartment or otherwise securely mounted on the apparatus and guarded, so that individuals cannot accidentally come in contact with equipment that may injure them.

(2) All hand tools, when not in use, ((shall)) must have appropriate covers and guards to prevent injury.

(3) Firefighters whose duties require them to operate a power chain saw ((shall)) must wear flexible ballistic nylon pads, sewn or otherwise fastened into the trousers, or other equivalent protection that ((shall)) must cover the full length of the thigh to the top of the boot. Additional trouser, eye, hearing, face and head protection as required by this chapter ((shall)) must be worn.

(4) Employees ((shall)) must not use the chainsaw to cut directly overhead, or at a distance that would require the operator to relinquish a safe grip on the saw.

(5) Only personnel trained in firing equipment ((shall)) must handle and use such equipment, and observe the manufacturers' recommendations.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07008 Aircraft operations for fighting wildland fires.** (1) Whenever fixed wing and rotary aircraft are being utilized on an incident, personnel trained in air operations management ((shall)) must be assigned as necessary by the incident commander/operations section chief.

(2) Prior to the initiation of air operations, all personnel operating in close proximity to an air drop ((shall)) must be notified of such activity.

(3) Personnel ((shall)) must not intentionally operate in an area where it can reasonably be expected that they may be hit with retardants or suppressants from fixed wing or rotary aircraft.

(4) Radio communications ((shall)) must be maintained between an aircraft/air attack group supervisor and the appropriate ground officer.

(5) Personnel assigned to ride in fixed wing or rotary aircraft ~~((shall))~~ must be briefed in the correct approach, riding and off-loading procedures for the particular type of aircraft.

**Note:** The NWCG aircraft passenger briefing/checklist can be found in the "Incident Response Pocket Guide" at [http://www.nwcg.gov/pms/pubs/IRPG\\_Jan2004.pdf](http://www.nwcg.gov/pms/pubs/IRPG_Jan2004.pdf)

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07010 Training for wildland firefighting.** (1) This section ~~((shall apply))~~ applies to all personnel and agencies called on to provide services at any fire defined as a "wildland fire."

(2) This section ~~((shall))~~ does not apply to structural suppression crews' actions taken on urban wildfires.

(3) Suppression personnel assigned to a wildland fire ~~((shall))~~ must be trained to a NWCG firefighter level II or a comparable class of training.

(a) "Comparable" training ~~((shall))~~ must be determined by the employer.

(b) Nothing in this section ~~((shall))~~ will preclude the use of local residents, affected parties or contracted firefighting resources to suppress wildland fires if they are under the direct supervision of a qualified fire line officer.

(4) Supervisory personnel ~~((shall))~~ must be trained to a level commensurate to the position and responsibility they are to assume.

(5) All personnel ~~((will))~~ must be trained and capable of demonstrating competency in utilizing the Incident Command System (ICS).

(6) All suppression personnel ~~((shall))~~ must annually review the ten fire orders, the eighteen "watch out" situations, and the four common denominators of tragedy fires.

**Note:** The National Interagency Fire Center's "Wildland Fire Safety Training Annual Refresher (WFSTAR)" is a good resource for training topics related to wildland firefighting. These resources can be found at <http://www.nifc.gov/wfstar/index.htm>

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07012 Personal protective clothing and equipment for wildland firefighting.** (1) Protective apparel and equipment for wildland firefighters ~~((shall))~~ must be designed to provide thermal protection for the firefighters against external heat sources with flame resistant clothing and equipment without creating high heat stress loads due to the prolonged work periods they experience. Members performing suppression on a wildland fire ~~((shall))~~ must wear a provided protective clothing ensemble as directed by their employer. The combined protective clothing ensemble includes:

- (a) Hardhat/helmet;
- (b) Upper and lower torso clothing;
- (c) Gloves; and
- (d) Goggles.

The 2005 edition of NFPA 1777, Standard Protective Clothing and Equipment for Wildland Firefighting, ~~((shall))~~ must serve as a guideline for determining performance characteristics of this clothing.

**Note:** This requirement does not apply to logging company employees whose primary job duty is not fire suppression, but are called upon to fight a wildland fire they discover.

(2) As a minimum, members ~~((shall))~~ must wear provided leather lace-up boots of sturdy construction which ~~((shall))~~ must extend upward a minimum of eight inches above the top of the sole to the lowest point of the top of the boot. The sole of the boot ~~((shall))~~ must be slip resistant.

(3) Additional personal protective equipment to be provided and worn ~~((shall))~~ must include a fire shelter as directed by the incident commander. Persons provided fire shelters ~~((shall))~~ must be trained in their use and ~~((shall))~~ must receive refresher training at least annually.

(4) Wildland protective clothing ~~((shall))~~ must comply with this standard.

(5) Personnel operating Type 1 or Type 2 engines assigned to structural protection ~~((shall))~~ must carry structural firefighting ensembles for each firefighter on their assigned apparatus.

(6) Wildland personnel protective clothing ~~((shall))~~ must not be used for interior structural firefighting.

(7) Personnel wearing full structural firefighting clothing while engaged in fighting wildland fires ~~((shall))~~ must not expend more than one hour before rotating to rest and rehabilitation. Agencies may rotate crews to avoid the one-hour benchmark when containing and controlling wildland fires.

(8) Fire departments ~~((shall))~~ must establish written procedures for the care, use, maintenance, and retirement criteria for wildland firefighting protective equipment in conjunction with the manufacturers' recommendations.

(9) Fire departments ~~((shall))~~ must establish written procedures for the use of protective clothing and protective equipment while performing wildland firefighting activities.

(10) All wildland fire shelters purchased after the effective date of this rule must meet or exceed the United States Forest Services' Missoula Technology and Development Center (MTDC) design criteria and performance requirements for "new generation fire shelters."

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07014 Apparatus standards for wildland firefighting.** This section applies to wildland fire apparatus meeting the NIMS ICS typing of a Type 3 through Type 7 engine, and intended for use combating fires occurring in natural vegetation or occurring in natural vegetation and threatening improvements.

(1) In a wildland fire, an engine may provide the primary protection for a crew in the event of unexpected fire behavior or an action that places the engine crew in a position of being exposed to heat and smoke.

(2) Apparatus speed ~~((shall))~~ must be determined to be safe if in the judgment of the officer in charge, the following are taken into consideration:

(a) The particular wildland fire attack methods being utilized including, but not limited to, the nature of the fire, the type of terrain, weather conditions, equipment conditions, and whether personnel are positioned in wildland firefighting enclosures;

(b) The forgoing provision (~~shall not~~) does not relieve a driver from the duty to drive with due regard for the safety of all persons in all conditions;

(c) Nor (~~shall~~) does such provision protect the driver from the consequences of (~~his/her~~) their reckless disregard for the safety of others.

(3) Because of the sheltering offered by an engine, the following minimum standards (~~shall~~) must be complied with:

(a) The number of individuals working/assigned as an engine crew (~~shall~~) must not exceed the manufacturer's cab capacity.

(b) Any time an engine is moved when not directly attacking a fire, personnel (~~shall~~) must ride in the vehicle's enclosed cabin area, in a seat-belted location, or be off the vehicle.

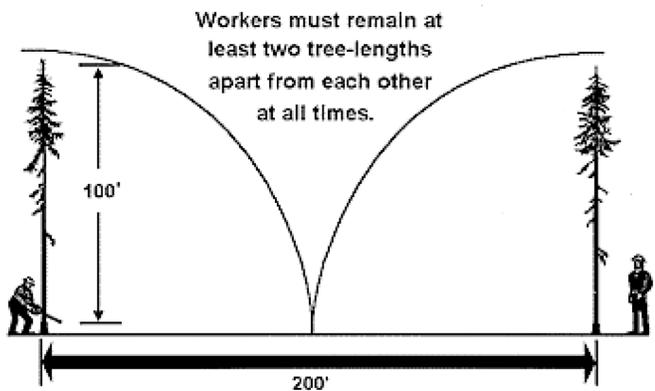
(c) Any time engines are used in a mobile attack configuration, and personnel other than the driver are on the apparatus, personnel (~~shall~~) must ride in the manufacturer's enclosed cabin, or use the personnel restraints and enclosures identified in WAC 296-305-07018.

(d) All personnel working on or around engines in a ground mobile attack mode or in riding positions (~~shall~~) must have visual or voice contact with the driver.

(e) Vehicles operating in smoke or dust (~~shall~~) must have their headlights, and if so equipped, a flashing or rotating roof light illuminated.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07016 Falling and equipment in forest lands.**



- (1) The employer must assign work areas so that:
  - (a) Trees cannot fall into an adjacent occupied work area;
  - (b) The distance between work areas is at least two tree lengths of the trees being fell (see Figure 1: Distance Between Work Areas);
  - (c) The distance between work areas reflects the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at the worksite; and

(d) A distance of more than two tree lengths is maintained between work areas on any slope where rolling or sliding of trees or logs is reasonably foreseeable.

**Exception:** This rule does not apply to a team of cutters working on the same tree.

(2) Before falling or bucking, conditions such as, but not limited to, the wind, the lean of tree, dead limbs, and the location of other trees, must be evaluated by the cutter and precautions taken so a hazard is not created for an employee.

(3) Employees must not approach a cutter closer than two tree lengths of trees being felled until the cutter has acknowledged that it is safe to do so.

(4) A competent person, properly experienced in this type of work, must be placed in charge of falling and bucking operations. Inexperienced workers must not be allowed to fall timber, buck logs or windfalls unless working under the direct supervision of an experienced cutter.

(5) Before an employee falls or bucks any tree:

- (a) A sufficient work area must be swamped.
- (b) The cutter must plan and clear an escape path.

(i) The escape path must extend diagonally away from the expected felling line unless such an escape path poses a greater hazard than an alternate escape path.

(ii) An escape path must be used as soon as the tree or snag is committed to fall, roll, or slide.

(6) If a cutter has determined a tree cannot be safely fell, the work must stop until the cutter has conferred with a supervisor or an experienced cutter and determined the safest possible work method or procedure.

(7) The person in charge of cutting crews must regularly inspect the work of the cutting crews and is responsible to ensure the work is performed in a proper and safe manner.

(8) All cutters must carry or have in near proximity at all times:

- (a) An axe or suitable tool for driving wedges.
- (b) A minimum of two wedges.
- (c) A first-aid kit.

(9) Where felled trees are likely to roll and endanger workers, cutting must proceed from the bottom toward the top of the slope, and uphill from previously fell timber.

(10) A cutter must not be placed on a hillside immediately below another cutter or below other operations where there is probable danger.

(11) Cutters must be informed of the movement and location of other employees placed, passing, or approaching the vicinity of trees being fell.

(12) Trees must be fell into the open whenever conditions permit.

(13) Domino falling of trees, including danger trees, is prohibited. Domino falling does not include the falling of a single danger tree by falling another single tree into it.

(14) Undercuts large enough to safely guide trees and eliminate the possibility of splitting must be used on all trees over six inches diameter at breast height.

(15) A cutter must place an adequate undercut and leave enough holding wood to ensure the tree will fall in the intended direction.

(16) The two cuts that form the undercut must not cross where they meet.

(17) The undercut must not be made while other workers are in an area into which the tree could fall.

(18) A backcut must be made in each tree being fell.

(a) The backcut must be as level as possible;

(b) The backcut must leave enough hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction; and

(c) The backcut must be above the level of the horizontal facecut to provide an adequate platform to prevent kickback.

(19) Trees with facecuts and/or backcuts must not be left standing unless all the following conditions are met:

(a) The cutter clearly marks the tree;

(b) Discontinues work in the hazardous area;

(c) Notifies all workers who might be endangered; and

(d) Takes appropriate measures to ensure that the tree is safely fell before other work is undertaken in the hazardous area.

(20) Undercuts and backcuts must be made at a height above the highest ground level to enable the cutter to safely begin the cut, control the tree, and have freedom of movement for a quick escape from a falling tree.

(21) Lodged trees must be clearly marked and identified by a predetermined method and all persons in the area must be instructed not to pass or work within two tree lengths of the trees except to ground them.

(22) On slopes over fifty percent grade, tree(s) must at least be quartered to a degree that prevents employees from being exposed to the possibility of sliding or rolling trees or logs.

(23) Each danger tree must be carefully checked for signs of loose bark, broken branches and limbs, or other damage before they are fell or removed. Accessible loose bark and other damage that may create a hazard for an employee must be removed or held in place before falling or removing the tree. When a danger tree has elevated loose bark that cannot be removed, the buddy system must be used to watch for and give warning of falling bark or other hazards.

(24) Danger trees that are unsafe to cut must be blown down with explosives or fell by other safe methods.

(25) To avoid use of wedges, which might dislodge loose bark or other material, danger trees must be fell in the direction of lean unless other means (mechanical or dynamite) are used.

(26) All bosses and supervisors must survey their assigned work area for danger trees and mitigate them prior to crews commencing work in that area.

**Definition.**

**Danger trees((+)).** Any tree of any height, dead or alive, that presents a hazard to workers because of rot, root, stem or limb damage, lean, or any other observable condition created by natural process or man-made activity.

(27) All fallers and faller bosses must be trained in the type of timber they will be falling prior to being assigned to a falling crew.

(28) All dozers, tractors, and similar machines in use where limbs or brush may injure the operator must be guarded as follows:

(a) Shear or deflector guards must be installed on each side of the vehicle at an angle leading forward and down from the top front edge of the canopy of the vehicle, which will

tend to slide the brush or limbs up and over the top of the canopy.

(b) Open mesh material with openings of a size that will reject the entrance of an object larger than one and three-quarter inches in diameter, must be extended forward as far as possible from the rear corners of the cab sides to give the maximum protection against obstacles, branches, etc., entering the cab area.

(c) Deflectors must also be installed ahead of the operator to deflect whipping saplings and branches.

(d) Deflectors must be located so as not to impede entrance to or exit from the compartment area.

(e) The floor and lower portion of the cab must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(29) All dozers used on terrain that has sufficient slope or of such material as to hinder the movement of the dozer must have an attached winch or drum line that is in good working order. When such a situation is encountered, the dozer assistant must be knowledgeable in the operation of the dozer, winch or drum line operations, the hazards associated with winching or drum line operations, and line anchor selection.

(30) Operators must operate and control their machines in a safe manner and avoid operations in areas where machine stability may not be maintained.

(31) Employee work areas must be spaced and employee duties organized so the actions of one employee do not create a hazard for any other employee.

AMENDATORY SECTION (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-07018 Occupant restraints and enclosures for wildland firefighting.** (1) While in motion, the driver and passengers in the cab ((shall)) must wear seat belts.

(2) Seat belts ((shall)) must comply with the U.S. Department of Transportation, Part 49 C.F.R., Section 571, Standards 209 and 210.

(3) Passengers on wildland vehicles ((shall)) must use a safety belt or a short lanyard securely connected to the apparatus.

(a) Safety belts or lanyards ((shall)) must be secured to an anchorage or structural member capable of supporting a minimum dead weight of one thousand five hundred pounds per person or a 4:1 safety factor.

(b) Safety lanyard lengths ((shall)) must not allow for the firefighter to reach the ground.

(4) Safety belts ((shall)) must be constructed and maintained in compliance with ANSI A10.14-1975.

(5) Lanyards ((shall)) must be a minimum of one-half inch nylon or equivalent with a nominal breaking strength of five thousand four hundred pounds.

(6) The structural components for wildland vehicle enclosures ((shall)) must be constructed of metal tubing not less than one inch in diameter, capable of supporting a minimum of one thousand five hundred pounds per person, a 4:1

safety ratio or the equivalent. This applies to vehicle enclosures manufactured after the effective date of this chapter.

(7) The enclosure (~~shall~~) must be constructed to a minimum toprail height of forty-two inches and (~~shall~~) must include a midrail and either a toeboard at least four inches high or a bottom rail a maximum of six inches from the platform.

(8) Access door(s) and latching mechanisms to tail board enclosures (~~shall~~) must be constructed and mounted to achieve structural integrity comparable to the remainder of the enclosure.

(9) A strap or butt-bar utilized for the fourth side of the enclosure (~~shall~~) must be a minimum of a four-inch nylon strap capable of supporting one thousand five hundred pounds dead weight.

(10) While actively fighting a fire in the mobile attack mode, firefighters (~~shall~~) must either remain in a three-sided enclosure and use a safety lanyard, or remain in a four-sided enclosure.

**AMENDATORY SECTION** (Amending WSR 13-05-070, filed 2/19/13, effective 1/1/14)

**WAC 296-305-08000 Appendices.** These appendices are nonmandatory and are included for reference and information purposes only.

Appendix B—Nonmandatory: Life safety ropes. (1) Life safety rope may be significantly weakened by abrasion, misuse, contamination, wear, and stresses approaching its breaking strength, particularly impact loading. Since there are no approved methods to service test a rope without compromising its strength, rope rescue and training operations should be carefully observed and monitored for conditions that could cause immediate failure or result in undetectable damage to the rope.

(2) If a rope has been used in a situation that could not be supervised or where potential damage may have occurred, it must be removed from service and destroyed.

(3) It is important that ropes be inspected for signs of wear by qualified individuals after each use. If indication of wear or damage are noted, or if the rope has been stressed in excess of the manufacturer's recommendation or impact loaded, it must be destroyed.

(4) The destruction of the rope means that it must be removed from service and altered in such a manner that it could not be mistakenly used as a life safety rope. This alteration could include disposing of the rope, or removal of identifying labels and attachments, and cutting the rope into short lengths that could be used for utility purposes.

(5) The assignment of "disposable" life safety ropes to members or to vehicles has proved to be an effective system to manage ropes that are provided for emergency use and are used infrequently. Special rescue teams, which train frequently and use large quantities of rope, should include members who are qualified to manage and evaluate the condition of their ropes and determine the limitations upon their reuse.

Appendix C—Nonmandatory: Decontamination. (1) A decontamination area should be established whenever civilians or fire department personnel have had known or suspected exposure to toxic chemicals.

(2) Such decontamination areas should be established before any personnel are allowed to enter the "Hot" zone.

(3) The decontamination area should be set up using the following guidelines:

(a) The decontamination area should be located uphill, upwind and at a right angle to the "Hot" zone.

(b) The decontamination area entry/exit point and boundaries should be clearly marked using flagging tape, ropes, cones, etc.

(4) 4 to 6 mil poly sheeting should be spread on the ground in the decontamination area to control runoff.

(5) The decontamination process is divided into stations. In most cases it will not be necessary to utilize all the stations. The decision to use all or part of the stations should be based on the following factors:

(a) The hazards associated with the product involved.

(b) The estimated levels of contamination.

(c) The type of protective equipment worn by contaminated responders.

(d) Recommendations from outside sources such as, but not limited to CHEMTREC, the agency for toxic substance and disease registry, poison control centers or the manufacturer of the product.

(6) The following is a list of all the stations in a nine-step decontamination area set up for a worst case scenario involving a hazardous materials response team member whose chemical suit has been breached:

(a) Station #1 - Segregated equipment drop: Contaminated equipment that will be used again in the "Hot" zone, disposed of, or decontaminated at a later time or place, will be deposited here.

(b) Station #2 - Wash/rinse: Entry personnel will be washed with appropriate decontamination solution and rinsed with water by attendant(s) to remove gross contamination. This station may consist of multiple wash/rinse steps depending on the severity of the hazards involved.

(c) Station #3 - Outer protective clothing removal: Attendant(s) will remove the outer protective clothing from entry personnel being cautious to avoid touching the inside of the suit while removing it. Protective clothing that has been removed at this step (~~shall~~) must be placed in an overpack or other appropriate container for later testing and further decontamination, if needed.

(d) Station #4 - Removal of SCBA: The entry personnel are assisted in removing their SCBA by an attendant. The SCBA facepiece should be left in place and the low pressure hose held away from any potentially contaminated inner clothing.

(e) Station #5 - Removal of inner clothing: All clothing worn inside the suit must be removed in cases where the suit has been penetrated and the entry personnel are contaminated.

(f) Station #6 - Personal shower: Entry personnel should wash and rinse entire body with mild soap and water. Contain runoff water if possible, however this is an emergency situation and containment is secondary to removing contaminants from personnel.

(g) Station #7 - Drying off: Entry personnel that have showered should dry off using towels or whatever is available. Items used should be placed in an appropriate container

for disposal. Emergency clothing such as disposable coveralls should be provided.

(h) Station #8 - Medical evaluation: Entry personnel should be evaluated by paramedics - checking vital signs including temperature and level of consciousness. Records of the evaluation must be kept and given to the team safety officer to be included in the members exposure records.

(i) Station #9 - Transport to emergency room: Any personnel exhibiting any signs or symptoms of exposure should be transported to the emergency room for evaluation and observation.

(7) The hazardous materials response team van should carry premeasured packets of decontamination solution mixes for the purpose of decontaminating chemical protective clothing and other equipment at the scene of a hazardous materials emergency. These solutions are not to be used to decontaminate turnouts or exposed skin under any circumstances.

(8) The primary solution used will be a simple detergent and water mixture. Other special decontamination solution mixes will only be used in those situations when it is determined that the detergent and water solution is inappropriate.

(9) Contaminated civilians that are exhibiting signs or symptoms of exposure should be treated as patients. Due to the risk of secondary contamination, all patients should undergo emergency field decontamination at the scene before being evaluated by medical personnel or being transported to the emergency room. Medical personnel should not accept any patient that has not been grossly decontaminated.

(10) The emergency field decontamination process should consist of removing the clothing from all affected body parts of the exposed person and flushing with copious quantities of water from a garden hose or low pressure one and three-quarter inch handline to remove gross contamination. Patients will be flushed for up to fifteen minutes, depending on the material recommendations on patient decontamination.

(11) Members performing patient decontamination should wear, at a minimum, full turnouts and SCBA and should avoid splashes and overspray to the extent possible. They should also undergo decontamination when they have finished decontaminating the patient.

(12) Containment of the runoff water from patient decontamination is not required. Do not delay decontamination of patients to set up containment. However, some form of privacy screen should be erected to protect the modesty of those being decontaminated.

(13) Responders that are contaminated in the process of performing rescue or other tasks will, at the minimum, be flushed with water for a minimum of one minute. Further flushing will be performed depending on the extent of contamination and subsequent adverse health effects.

Appendix D—Nonmandatory:

### Guidelines for Managing Two-in/Two-out

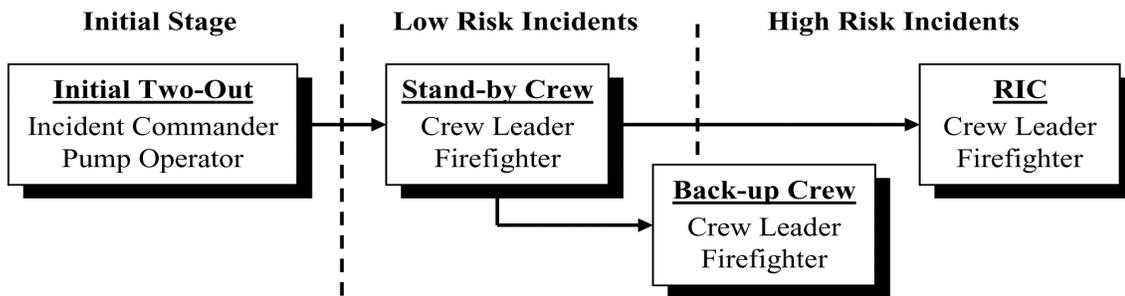
#### Rapid Intervention (Two-in/Two-out)

Incident Commanders must maintain rapid intervention capability (Two-out) so that, should the need arise, a rescue crew is readily available to provide for the rescue of any responders operating within a hazard area (Two-in). A hazard area is defined as any area that requires the use of PPE or in which a responder is at risk of becoming lost, trapped, or injured by the environment or structure. This includes entering a structure reported to be on fire, operating in close proximity to the structure during exterior operations, confined space operations, rope rescue, haz-mat, etc.

Rapid Intervention is the **systematic management** of response to a “Mayday” situation where the need for an immediate rescue of emergency responders has become necessary.

**Responsibility** – Incident Commanders are ultimately responsible for the incident outcome and the safety of all responders operating at the scene. Therefore, Incident Commanders must maintain a constant balance between the urgent need to perform critical tasks and the personal safety of the responders performing those tasks. To support this, and before responders can be assigned to operate within a hazard area, Incident Commanders must establish a two-out resource capable of providing rapid intervention. Incident Commander must maintain this capability throughout the incident until the risk to responders has been sufficiently mitigated.

**Providing Two-Out Capability** – The methods for providing Two-out should match the incident’s degree of potential risk and can evolve as resources become available. The following flowchart provides a decision-making guideline, illustrating a model sequence for determining how, and to what extent. Two-out capability should be provided so that it corresponds with the incident stage, size, complexity, and level of risk to responders.



For high risk incidents, a RIC should be assigned, given time to prepare, while the Stand-by Crew provides two-out. Once ready, the RIC replaces the Stand-by Crew who can move up to Back-up.

#### Two-Out Staffing Options

**Initiating Two-out** – During the “Initial Stage” of an incident, the two-out provision may be provided as a secondary responsibility by the Pump Operator and the Incident Commander.

The “Initial Stage” of an incident is defined as the stage that encompasses the tasks undertaken by the first arriving company with only one crew assigned or operating in the hot zone.

Once a second crew is assigned to operate within the hazard area, the incident is no longer in the “Initial Stage”. With multiple crews operating in a hazard area, the Incident Commander and Pump Operator’s ability to realistically function as an effective two-out rescue crew drastically diminishes. At this point, the Incident Commander shall assign a dedicated crew of two-out, which may be in the form of a Stand-by Crew or a RIC.

**The IC and Pump Operator can only initiate Two-out during the Initial Stage**

**Stand-by Crew** - A Stand-by Crew is assigned when the Incident Commander opts not to assign a RIC Crew. This would be done as a short term assignment for incidents that can be quickly and safely mitigated because they are contained, limited to contents, and are of minimal risk to responders. Examples include a smoldering mattress, an appliance fire, or a stovetop fire.

**Standby Crews are assigned as a short term two-out provision for low risk incidents**

A Stand-by Crew can also be assigned as an interim step while waiting for a RIC to arrive and/or assemble. A Stand-by Crew consists of at least two firefighters held outside the hazard area, available for immediate assistance or rescue of an entry crew. Once relieved by a RIC, the Stand-by Crew may be assigned to become a Back-up Crew.

**Rapid Intervention Crew (RIC)** – Functionally synonymous to a Stand-by Crew, a RIC is assigned for high risk incidents involving sustained operations to replace the Stand-by Crew. A RIC consists of at least two firefighters held outside the hazard area available for immediate assistance or rescue of an entry crew operating within the hazard. It must be recognized that a RIC alone may not be adequate when it comes to actually conducting a rescue of a trapped firefighter. Therefore, it must be understood that the primary role of a RIC is only to initiate the rescue effort.

**RIC should be assigned to replace the Stand-by Crew during high risk incidents**

- The primary role of a Stand-by Crew or RIC is to:
1. **Locate** and gain access to the firefighter in peril;
  2. Provide them with **emergency air** management; and to
  3. Provide **reconnaissance** information to the Incident Commander for the coordination of additional crews assigned to support the rescue effort. **Rescue if able.**

**RIC effectiveness is limited to only reacting to a rescue situation**

**Back-up Crews**

Back-up Crews are strategically pre-positioned in the immediate vicinity of crews operating in areas with a high level of risk. A pre-positioned back-up crew is the most familiar with the other crew’s location, situation, the hazards they are exposed to, and the immediate surroundings. A back-up crew’s placement also positions them to better recognize a potential or developing “Mayday” situation, enabling them to immediately intervene, thus averting a “Mayday” situation.

**Back-up Crews provide protection because they are positioned in a manner that allows them to initiate actual intervention**

Back-up Crews are intended to provide a crew of at least two members positioned offensively with a charged hose line and/or other applicable equipment. Back-up Crews operate with three given priorities. In coordination with the Incident Commander and in order of priority, they are assigned for the specific purpose of:

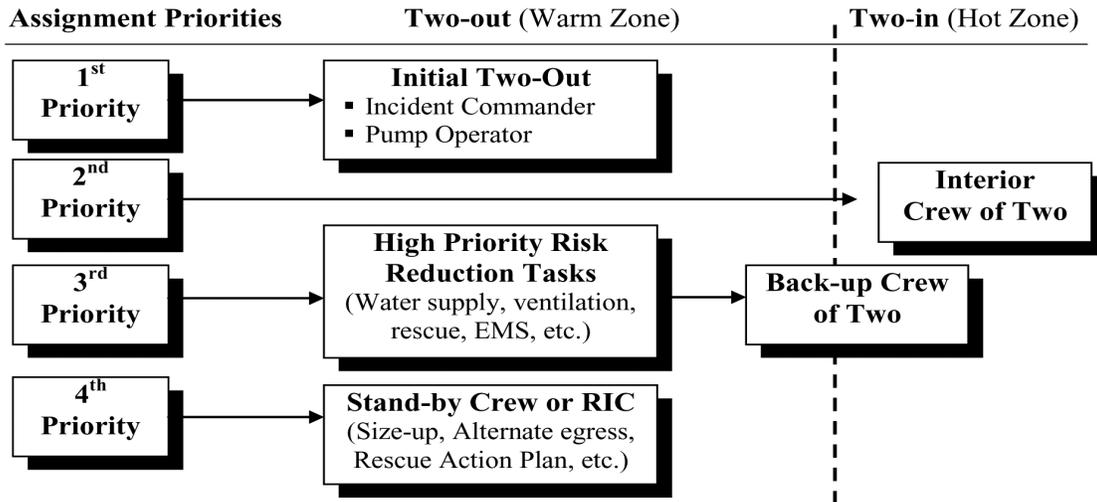
1. As dictated by fire and/or other hazardous conditions, protecting the means of egress for interior crews;
2. Serving as the Incident Commander’s eyes and ears specifically to assess conditions within the Hot Zone, conveying risk assessment reconnaissance information to the Incident Commander, monitoring conditions, and if conditions begin to deteriorate, immediately initiating the appropriate form of intervention;
3. If priorities 1 and 2 are accounted for, conducting a primary search, or supplement initial fire attack efforts.

Although protecting egress is the Back-up Crew’s primary responsibility, they may also support entry crews with hose advancement, victim removal, monitoring fire extension, etc.

As a general guideline, Back-up Crews are assigned with the following progression:

- If an entry crew is assigned to enter the hazard area, a Stand-by Crew or RIC must also be assigned as the two-out provision for providing rapid intervention capability.
- If a RIC has been assigned, the Stand-by Crew can move up to become the Back-up Crew.

**Deployment Order of Priority (Structure Fire Example)** – Though maintaining Two-in/Two-out is a requirement, how the Incident Commander chooses to do so is flexible. The following flowchart provides a decision-making guideline for planning tactical assignments while maintaining Two-in/Two-out. The following sequence is intended to guide crew deployment in a manner that balances the need to initiate and establish a Two-out crew while also assigning crews to critical incident mitigation tasks within the hazard area.



**Adjacent and Additional Crews**

Case studies prove that a Stand-by Crew or RIC operating alone may not be sufficient when rescuing a trapped firefighter when extrication and/or rescue are required. Rescue efforts will likely require the support of additional crews to provide extrication equipment and rescue personnel. To create these supporting crews the Incident Commander can reassign adjacent crews or assign additional crews, generally a combination of the two.

**Adjacent Crews** – When a crew declares a “Mayday”, the rescue efforts initiated by other crews operating in close proximity is nearly as effective as what a back-up crew can provide. Adjacent crews may be in a position to suspend their current assignment and immediately initiate rescue efforts. But if an adjacent crew is performing an activity that will protect rescue efforts, they should not be re-assigned if suspending their current assignment would potentially compromise this protection. Re-assignment of adjacent crews does not preclude the deployment of the Stand-by Crew or RIC. The primary role of the Stand-by Crew or RIC is to locate the firefighters in peril, provide them with emergency air management, and to facilitate their rescue.

**Crews must not self-dispatch!**

**Additional Crews** – When a crew declares a “Mayday, Mayday, Mayday”, additional crews can be assigned by the Incident Commander to support rescue efforts or to replace adjacent crews who were re-assigned to the rescue effort. Additional crews will generally be deployed from a staging area.

**Resource Reserve** – Incident Commanders should maintain a reserve of resources so that if a rapid intervention must be initiated, they have enough resources to support the rescue effort while continuing to sustain the original incident operations. Often this means calling for additional resources, second, or third alarms. Early consideration should be given to assure these reserve resources are on scene and available when needed.

Appendix E—Nonmandatory: Standard apparatus operation communications.

When firefighters ride in the tiller's seat or other remote location, an electrical signal or voice communication should be installed between the tiller's seat, work station, and driver's compartment.

(1) These signals should be used between the driver and the firefighters:

- (a) One long buzz means stop;
- (b) Two buzzes mean forward;
- (c) Three buzzes mean reverse.

(2) Before any of the above functions are undertaken, with the exception of stopping, the same signal must be both sent and received. The driver should not act without sending and receiving a confirming signal.

(3) When using hand signals, these signals are as follows:

**STOP**

Hold hand to the side, shoulder high, exposing palm to the driver. At night, hold hands in the same manner, with the addition of a flashlight in one hand shining at the driver. This will indicate an immediate STOP.



STOP

Hold hand to the side, shoulder high, exposing palm to the driver. At night, hold hands in the same manner, with the addition of a flashlight in one hand shining at the driver. This will indicate an immediate STOP.

**RIGHT OR LEFT**

Point in the desired direction with one hand and motion in a circular "come-on" gesture with the other hand at the chest level. At night direct a flashlight beam at the hand pointing in the desired direction.



RIGHT OR LEFT

Point in the desired direction with one hand and motion in a circular "come-on" gesture with other at the chest level. At night, direct a flashlight beam at the hand pointing in the desired direction.

**DIMINISHING CLEARANCE**

Hold the hands to one side of the body indicating the approximate amount of distance the apparatus is from the obstacle. Close hands accordingly as the driver slowly maneuvers the apparatus to point where the signal indicates immediate STOP. Always allow enough for drivers reaction time.

At night, indicate in the same manner with the flashlight in the upper hands and beam directed at the palm of the other. On STOP, cover the flashlight beam with the hands.



DIMINISHING CLEARANCE

Hold the hands to one side of the body indicating the approximate amount of distance the apparatus is from the obstacle. Close hands accordingly as the driver slowly maneuvers the apparatus to point where the signal indicates immediate STOP. Always allow enough for divers reaction time. At night, indicate in the same manner with the flashlight in the upper hands and beam directed at the palm of the other. On STOP, cover the flashlight beam with the hands.

**AHEAD OR BACK UP**

Hold hand directly in front, chest high, fingers on hands directed toward one another, and motion in a circular "come-

on" gesture. At night hold a flashlight in one hand and direct the beam toward the other.



AHEAD OR BACK UP

Hold hand directly in front, chest high, fingers on hands directed toward one another, and motion in circular "come-on" gesture. At night hold a flashlight in one hand and direct the beam toward the other.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-100 Introduction. The ((WISHA)) safety and health core rules: Your foundation for a safe and healthful workplace. This book contains ((26)) basic safety and health rules that affect all employers and should cover almost everything small, nonmanufacturing employers need for a safe and healthful workplace. These core rules include requirements for your accident prevention program, personal protective equipment, first aid, and ((hazard communication program)) basic electrical rules.**

**Note: You may need to comply with other ((WISHA)) safety and health rules. For a complete list of ((WISHA)) these rules((; see the resources section of this book)) go to <http://www.lni.wa.gov/Safety/Rules/Find/RuleName/>.**

~~((Why does workplace safety and health matter to you?~~

~~On average, two people lose their lives every week in job-related incidents in Washington state. Each year, more than 250,000 workers' compensation claims are accepted for work-related injuries and illnesses. Medical care and wage replacement for these injured workers costs more than a billion dollars. The indirect costs of workplace injuries are even larger in terms of lost quality of life, personal financial ruin, operating costs of business, and decreased profitability. Employers and employees who work together to identify and control hazards on the job can save lives and money while improving business and productivity.))~~

**What are L&I, WISHA and ((WISHA)) DOSH?**

The department of labor and industries (L&I) is a state agency that provides many different services:

- The division of occupational safety and health (DOSH) is responsible for workplace safety and health, including inspections and enforcement, consultation, technical assistance, training, education and grants. ((WISHA))

- Workers' compensation (or industrial insurance), including claims management, rate setting, medical payments, and research.

- Specialty compliance services, including contractor registration, electrical inspections, boiler and elevator inspections, apprenticeship programs and employment standards.

Many of these services are available from L&I's ~~((twenty-two))~~ regional offices ~~((see the resource section of this book for a list of regional offices))~~. Go to this web site for the most current list. <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>.

In 1973, the legislature passed the Washington Industrial Safety and Health Act ~~((or WISHA-))~~ (WISHA) see Revised Code of Washington (chapter 49.17 RCW)((3)). WISHA requires employers to provide safe and healthful workplaces for all employees. It gives L&I/DOSH the responsibility to establish and enforce workplace safety and health rules. These rules are the Washington Administrative Code (WAC).

#### **How does ((WISHA)) DOSH work?**

The Washington Industrial Safety and Health Act (WISHA) covers nearly all employers and employees in Washington, including employees who work for the state, counties, and cities. L&I inspectors within DOSH enforce ~~((WISHA))~~ safety and health rules by inspecting workplaces without advance notice including investigations of work-related deaths, injuries, and employees' complaints. When ~~((WISHA))~~ DOSH inspectors find a violation in a workplace, they issue a citation to the employer and a penalty may be attached. If you have questions about whether you are covered by WISHA, call 1-800-4BE SAFE (1-800-423-7233) or a local office of L&I. <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>.

#### **What is OSHA and its relationship to ((WISHA)) DOSH?**

The U.S. Congress created the Occupational Safety and Health Administration (OSHA) in 1971 to develop and enforce workplace safety and health rules throughout the country. States may choose to run their own safety and health programs as long as they are at least as effective as OSHA. Washington state has chosen to run its own program and most employers in the state, therefore, are subject to enforcement by L&I and not by federal OSHA.

In Washington state, OSHA covers workplaces with federal employees, nonfederal employees working on federal reservations and military bases, employees working on floating worksites (floating dry docks, fishing boats, construction barges), and employees working for tribal employers on tribal lands.

#### **Does WISHA apply to you?**

WISHA applies to almost every employer and employee in Washington. WISHA applies to you if:

- You hire someone to work for you as an employee, including workers from a temporary agency.
- You are hired to work for someone as their employee.

- You own your own business or you are a corporate officer and have elected industrial insurance coverage for yourself.

- You have a contract with someone else that primarily involves personal labor, even though you are not required to pay industrial insurance or unemployment insurance premiums.

- You volunteer your personal labor, or you have volunteers working for you who receive any benefit or compensation.

If you have any questions about your particular situation, call **1-800-4BE SAFE (1-800-423-7233)** or contact your local office of L&I for help. ~~((See the resource section of this book for a complete list of L&I offices.))~~ <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>.

#### **Are there other safety and health rules I need to know about?**

In addition to the rules in the ~~((WISHA))~~ DOSH Safety and Health Core Rules book, there are other general ~~((WISHA))~~ safety and health rules that may apply to employers, depending upon the industry and workplace activities. ~~((See the resource section of this book for a complete list of WISHA rules or go to the web site for all the state rules administered by L&I at <http://www.wa.gov/lni/home/waes.htm>))~~ See this web site for a complete list of safety and health rules administered by L&I. <http://www.lni.wa.gov/Safety/Rules/Find/RuleName/>. If you have questions about these rules ~~((or would like copies of them.))~~ call 1-800-4BE SAFE (1-800-423-7233) or your local office of L&I.

#### **How do the ((WISHA)) safety and health rules relate to fire, building and electrical codes?**

Fire codes: ~~((WISHA))~~ Safety and health rules contain basic requirements for portable fire extinguishers, exit routes, housekeeping, storage, stairs and electrical hazards for the protection of employees in your workplace. The rules contained in this book are the most basic requirements to make sure that as an employer you provide a safe and healthy work environment. However, these are not the only rules regarding the requirements for portable fire extinguishers, exit routes, housekeeping, storage, stairs and electrical equipment. The fire marshal and local fire authorities enforce the Uniform Fire Code (UFC). ~~((WISHA))~~ DOSH and UFC differ in some areas, for example UFC requires exit sign lettering to be 6" or more and WISHA only states that the letters have to be clearly visible. Fire codes have more detailed and extensive requirements for the protection of the public than ~~((WISHA))~~ DOSH. Some codes overlap with ~~((WISHA))~~ DOSH requirements.

Building and electrical codes: WISHA rules are minimum requirements regardless of when the building was built or remodeled. Buildings must also comply with building and electrical codes at the time of construction. If you remodel, you must comply with the building and electrical codes applicable at that time. Building authorities and electrical inspection authorities enforce rules from the Uniform Building Code (UBC), and the National Electrical Code (NEC).

You are encouraged to call your local fire, building or electrical authority. For more information on the requirements in your area look in the government section of your

phone book. Copies of these codes are available at your local library.

**How can ((WISHA)) DOSH help employers and employees?**

Employers can ask ((WISHA)) DOSH safety and health consultation staff for free, confidential consulting services in your workplace. ((WISHA)) DOSH safety and health professionals can examine your workplace and make recommendations about how to comply with ((WISHA)) the safety and health rules. If the consultant finds hazards, the employer will be given a reasonable period of time to correct the hazard without citation or penalty.

Sometimes you might have to wait for an appointment because of the demand for these services. You still must provide a safe workplace while you wait for a consultation.

((WISHA)) DOSH offers a wide variety of free services. See the web site below for web access to the following information:

- Safety and health workshops held in locations throughout the state.
- A comprehensive safety and health video lending library.
- Safety and health publications geared for both employer and employee.
- Web site with online publications and learning opportunities.

<http://www.lni.wa.gov/Safety/TrainingPrevention/>.

Note: By law, ((WISHA)) DOSH consultants do not have any enforcement authority.

((Link: For more information, call 1-800-4BE SAFE (1-800-423-7233) or visit <http://www.wa.gov/lni/home/training.htm>.)

**AMENDATORY SECTION** (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-110 Employer responsibilities: Safe workplace—Summary.**

**Your responsibility:**

To provide a safe and healthy workplace free from recognized hazards.

**IMPORTANT:**

Use these rules where there are no specific rules applicable to the particular hazard.

((You must:

~~Provide a workplace free from recognized hazards.~~

~~WAC 296-800-11005.~~

~~Provide and use means to make your workplace safe.~~

~~WAC 296-800-11010.~~

~~Prohibit employees from entering, or being in, any workplace that is not safe.~~

~~WAC 296-800-11015.~~

~~Construct your workplace so it is safe.~~

~~WAC 296-800-11020.~~

~~Prohibit alcohol and narcotics from your workplace.~~

~~WAC 296-800-11025.~~

~~Prohibit employees from using tools and equipment that are not safe.~~

~~WAC 296-800-11030.~~

~~Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.~~

~~WAC 296-800-11035.~~

~~Control chemical agents.~~

~~WAC 296-800-11040.~~

~~Protect employees from biological agents.~~

~~WAC 296-800-11045.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Provide a workplace free from recognized hazards</u>  | <u>WAC 296-800-11005</u> |
| <u>Provide and use means to make your workplace safe</u>   | <u>WAC 296-800-11010</u> |
| <u>Prohibit employees from entering, or being in, any workplace that is not safe</u>   | <u>WAC 296-800-11015</u> |
| <u>Construct your workplace so it is safe</u>  | <u>WAC 296-800-11020</u> |
| <u>Prohibit alcohol and narcotics from your workplace</u>  | <u>WAC 296-800-11025</u> |
| <u>Prohibit employees from using tools and equipment that are not safe</u>   | <u>WAC 296-800-11030</u> |
| <u>Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice</u> | <u>WAC 296-800-11035</u> |
| <u>Control chemical agents</u>   | <u>WAC 296-800-11040</u> |
| <u>Protect employees from biological agents</u>  | <u>WAC 296-800-11045</u> |

Note: Employees may discuss and participate in any WISHA safety and health related practice and may refuse to perform dangerous tasks without fear of discrimination. Discrimination includes: Dismissal, demotion, loss of seniority, denial of a promotion, harassment, etc. see chapter 296-360 WAC, Discrimination pursuant to RCW 49.17.160, for a complete description of discrimination and the department's responsibility to protect employees.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-11005 Provide a workplace free from recognized hazards.** You must((:

•) provide your employees a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death.

Note: A hazard is recognized if it is commonly known in the employer's industry, or if there is evidence that the employer knew or should have known of the existence of the hazard, or if it can be established that any reasonable person would have recognized the hazard.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-11010 Provide and use means to make your workplace safe.** You must((=

•)) provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make your workplace safe.

((=)) (1) You must not remove, displace, damage, destroy or carry off any safety device, safeguard, notice or warning, furnished for use in any employment or place of employment.

((=)) (2) You must not interfere with use of any of the above.

((=)) (3) You must not interfere with the use of any method or process adopted for the protection of any employee.

((=)) (4) You must do everything reasonably necessary to protect the life and safety of your employees.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-11015 Prohibit employees from entering, or being in, any workplace that is not safe.** You must((=

•)) prohibit employees from entering, or being in, any workplace that is not safe.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-11020 Construct your workplace so it is safe.** You must((=

•)) not construct, or cause to be constructed, a workplace that is not safe.

((=)) This rule applies to employers, owners, and renters of property used as a place of employment.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-11025 Prohibit alcohol and narcotics from your workplace.** (1) You must((=

•)) prohibit alcohol and narcotics from your workplace, except in industries and businesses that produce, distribute, or sell alcohol and narcotic drugs.

((=)) (2) You must prohibit employees under the influence of alcohol or narcotics from the worksite.

**Exemption:** Employees who are taking prescription drugs, as directed by a physician or dentist, are exempt from this section, if the employees are not a danger to themselves or other employees.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-11030 Prohibit employees from using tools and equipment that are not safe.** You must((=

•)) take responsibility for the safe condition of tools and equipment used by employees.

**Note:** This applies to all equipment, materials, tools, and machinery whether owned by the employer or another firm or individual.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-11035 Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.** You must((=

•)) establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-11040 Control chemical agents.** (1) You must((=

•)) control chemical agents in a manner that they will not present a hazard to your workers; or

((=)) (2) You must protect workers from the hazard of contact with, or exposure to, chemical agents.

**Note:** Pesticides are considered to be chemical agents. As required by this rule, you must control them or provide protection to workers from exposure to pesticide hazards. Pesticide manufacturers supply precautionary statements in the information provided with the pesticide that tells you how to protect your workers from these hazards.

AMENDATORY SECTION (Amending WSR 04-18-080, filed 8/31/04, effective 11/1/04)

**WAC 296-800-11045 Protect employees from biological agents.** ((~~You must~~))

(1) You must protect employees from exposure to hazardous concentrations of biological agents that may result from processing, handling or using materials or waste.

**Note:** Potential exposure to biological agents occurs during cleanup, or other tasks, where employees handle:

- Animals or animal waste
- Body fluids
- Biological agents in a medical research lab
- Mold or mildew

Check The Center of Disease Control web site ([www.cdc.gov](http://www.cdc.gov)) to find published guidelines and information on safe handling and protection from specific biological agents (examples: Hanta virus, TB).

((~~You must~~))

(2) You must warn employees of biohazards.

((=)) (3) You must use signs, tags, or labels to identify:

((=)) (a) The actual or potential presence of a biohazard;

((~~AND~~

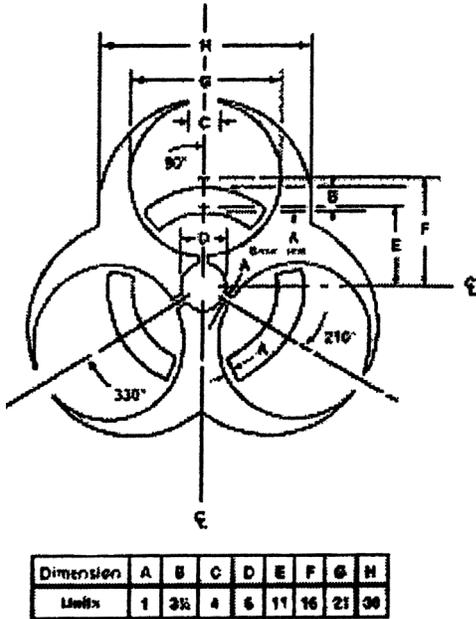
-)) and

(b) Equipment, containers, rooms, materials, experimental animals, or any combinations of these that contain viable hazardous agents.

**Definition:**

**Biohazard** means those infectious agents presenting a risk or potential risk of death, injury or illness to employees.

~~((You must: \*~~) You must make sure the sign, tag, or label includes the biohazard symbol that is designed and proportioned in the illustration that follows.



~~((You must: \*~~) You must make sure that there is sufficient contrast for the symbol to be clearly defined, if the sign, tag, or label has a background color.

**Reference:** Additional requirements for biohazard signs, tags, and labels may apply. See WAC 296-823-14025 and 296-823-18040 of the *Bloodborne Pathogens* book.

- Note:**
- It's recommended that the sign, tag, or label have a key color of fluorescent orange or orange-red and lettering or symbols in a contrasting color.
  - Appropriate wording may be used in association with the symbol to indicate:
    - The nature or identity of the hazard;
    - Name of individual responsible for its control;
    - Precautionary information;
  - OR
  - Other information.
  - This information should not be written on the symbol.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-120 Rule.** ~~((Employee's responsibility: T\*))~~ You must play an active role in creating a safe and healthy workplace and comply with all applicable safety and health rules.

**Note:** Employees may discuss and participate in any WISHA safety and health related practice and may refuse to perform dangerous tasks without fear of discrimination. Discrimination includes: Dismissal, demotion, loss of seniority, denial of a promotion, harassment, etc. (see chapter 296-360 WAC, Discrimination) pursuant to RCW 49.17.160 for a complete description of discrimination and the department's responsibility to protect employees.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-12005 Employee responsibilities.** Employees must:

- ~~((\*)~~) (1) Study and follow all safe practices that apply to their work.
- ~~((\*)~~) (2) Coordinate and cooperate with all other employees in the workplace to try to eliminate on-the-job injuries and illnesses.
- ~~((\*)~~) (3) Apply the principles of accident prevention in their daily work and use proper safety devices and protective equipment as required by their employment or employer.
- ~~((\*)~~) (4) Take care of all personal protective equipment (PPE) properly.
- ~~((\*)~~) (5) Not wear torn or loose clothing while working around machinery.

**Note:** Things such as clothing, hair, and jewelry can get caught in machinery and be a hazard on the job.

~~((Employees must: \*~~) (6) Report promptly to their supervisor every industrial injury or occupational illness.

- ~~((\*)~~) (7) Not remove, displace, damage, or destroy or carry off any safeguard, notice, or warning provided to make the workplace safe.
- ~~((\*)~~) (8) Not interfere with use of any safeguard by anyone in the workplace.
- ~~((\*)~~) (9) Not interfere with the use of any work practice designed to protect them from injuries.
- ~~((\*)~~) (10) Do everything reasonably necessary to protect the life and safety of employees.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-130 Safety committees/safety meetings—Summary.**

**Important:** This rule requires you to have a method of communicating and evaluating safety and health issues brought up by you or your employees in your workplace. Larger employers **must** establish a safety committee. Smaller employers have the choice of either establishing a safety committee or holding safety meetings with a management representative present.

There is a difference between a safety committee and a safety meeting.

- A safety committee is an organizational structure where members represent a group. This gives everyone a voice but keeps the meeting size to an effective number of participants.

• A safety meeting includes all employees and a management person is there to ensure that issues are addressed. Typically, the safety committee is an effective safety management tool for a larger employer and safety meetings are more effective for a smaller employer.

**Your responsibility:**

~~((☒))~~ You must establish a safety committee or hold safety meetings to create and maintain a safe and healthy workplace for all employees.

~~((You must:~~

~~Establish and conduct safety committees.~~

~~WAC 296-800-13020.~~

~~Follow these rules to conduct safety meetings.~~

~~WAC 296-800-13025.))~~

|  |                          |
|--|--------------------------|
| <u>You must meet the requirements ...</u>            | <u>in this section:</u>  |
| <u>Establish and conduct safety committees</u>       | <u>WAC 296-800-13020</u> |
| <u>Follow these rules to conduct safety meetings</u> | <u>WAC 296-800-13025</u> |

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-13020 Establish and conduct safety committees. (~~(You must:))~~**

|  |                                       |
|--|---------------------------------------|
| <b>If:</b>   | <b>Then:</b>                          |
| You employ 11 or more employees on the same shift at the same location | You must establish a safety committee |

(1) You must establish a safety committee.

((\*) Make sure your committee:

((-) (a) Has employee-elected and employer-selected members.

((\*) (i) The number of employee-elected members must equal or exceed the number of employer-selected members.

**Note:** Employees selected by the employees bargaining representative or union qualify as employee-elected.

((\*) (ii) The term of employee-elected members must be a maximum of one year. (There is no limit to the number of terms a representative can serve.)

((\*) (iii) If there is an employee-elected member vacancy, a new member must be elected prior to the next scheduled meeting.

((-) (b) Has an elected chairperson.

((-) (c) Determines how often, when, and where, the safety committee will meet.

**Note:**

- Meetings should be one hour or less, unless extended by a majority vote of the committee.
- If the committee cannot agree on the frequency of meetings, the department of labor and industries regional safety consultation representative should be consulted for recommendations. (See the resources section of this book for contacts.)

~~((You must:))~~

(2) Your safety committee must cover these topics:

((\*) (a) Review safety and health inspection reports to help correct safety hazards.

((\*) (b) Evaluate the accident investigations conducted since the last meeting to determine if the cause(s) of the unsafe situation was identified and corrected.

((\*) (c) Evaluate your workplace accident and illness prevention program and discuss recommendations for improvement, if needed.

((\*) (d) Document attendance.

((\*) (e) Write down subjects discussed.

(3) You must record meetings.

((\*) Prepare minutes from each safety committee and:

((-) (a) Preserve them for one year.

((-) (b) Make them available for review by safety and health consultation personnel of the department of labor and industries.

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-13025 Follow these rules to conduct safety meetings. (~~(You must:))~~**

|   |   |
|---|---|
| <b>If:</b>  | <b>Then:</b>  |
| You have 10 or fewer employees<br><b>OR</b><br>If you have 11 or more employees that<br>• Work on different shifts with 10 or fewer employees on each shift<br><b>OR</b><br>• Work in widely separate locations with 10 or fewer employees at each location | You may choose to hold a safety meeting instead of a safety committee |

(1) You must do the following for safety meetings.

((\*) Make sure your safety meetings:

((-) (a) Are held monthly. You may meet more often to discuss safety issues as they come up.

((-) (b) Have at least one management representative.

(2) Your safety committee must cover these topics.

((\*) (a) Review safety and health inspection reports to help correct safety hazards.

((\*) (b) Evaluate the accident investigations conducted since the last meeting to determine if the cause(s) of the unsafe situation was identified and corrected.

((\*) (c) Evaluate your workplace accident and illness prevention program and discuss recommendations for improvement, if needed.

((\*) (d) Document attendance.

((\*) (e) Write down subjects discussed.

**Note:** There are no formal documentation requirements for safety meetings except for writing down who attended and the topics discussed.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-140 Accident prevention program. (~~(Summary:))~~**

**Your responsibility:**

~~((T))~~ You must establish, supervise and enforce an accident prevention program (APP) that is effective in practice. (You may call this your total safety and health plan.)

~~((You must:~~

~~Develop a formal, written accident prevention program (APP):~~

~~WAC 296-800-14005.~~

~~Develop, supervise, implement, and enforce safety and health training programs that are effective in practice.~~

~~WAC 296-800-14020.~~

~~Make sure your accident prevention program (APP) is effective in practice.~~

~~WAC 296-800-14025.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Develop a formal, written accident prevention program</u>   | <u>WAC 296-800-14005</u> |
| <u>Develop, supervise, implement, and enforce safety and health training programs that are effective in practice</u> | <u>WAC 296-800-14020</u> |
| <u>Make sure your accident prevention program is effective in practice</u>   | <u>WAC 296-800-14025</u> |

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-14005 Develop a formal, written accident prevention program.** (1) You must((:

•)) develop a formal accident prevention program that is outlined in writing. The program must be tailored to the needs of your particular workplace or operation and to the types of hazards involved.

**Note:** The term "accident prevention program" refers to your written plan to prevent accidents, illnesses, and injuries on the job. Your accident prevention program may be known as your safety and health plan, injury prevention program, or by some other name.

(2) You must((:

•)) make sure your Accident Prevention Program contains at least the following elements:

((-) (a) A safety orientation:

((♦) (i) A description of your total safety and health program.

((♦) (ii) On-the-job orientation showing employees what they need to know to perform their initial job assignments safely.

((♦) (iii) How and when to report on-the-job injuries including instruction about the location of first-aid facilities in your workplace.

((♦) (iv) How to report unsafe conditions and practices.

((♦) (v) The use and care of required personal protective equipment (PPE).

((♦) (vi) What to do in an emergency, including how to exit the workplace.

((♦) (vii) Identification of hazardous gases, chemicals, or materials used on-the-job and instruction about the safe use and emergency action to take after accidental exposure.

((-) (b) A safety and health committee.

(WAC 296-800-130.)

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-14020 Develop, supervise, implement, and enforce safety and health training programs that are effective in practice.** (1) You must((:

•)) develop, supervise, implement, and enforce training programs to improve the skill, awareness, and competency of all your employees in the field of occupational safety and health.

((•) (2) You must make sure training includes on-the-job instruction to employees prior to their job assignment about hazards such as:

((-) (a) Safe use of powered materials-handling equipment, such as forklifts, backhoes, etc.

((-) (b) Safe use of machine tool operations.

((-) (c) Use of toxic materials.

((-) (d) Operation of utility systems.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-14025 Make sure your accident prevention program is effective in practice.** You must((:

•)) establish, supervise, and enforce your accident prevention program in a manner that is effective in practice.

AMENDATORY SECTION (Amending WSR 04-07-160, filed 3/23/04, effective 5/1/04)

**WAC 296-800-150 Rule summary.**

**Your responsibility:**

You must make sure first-aid trained personnel are available to provide quick and effective first aid.

~~((You must:~~

~~Make sure that first-aid trained personnel are available to provide quick and effective first aid.~~

~~WAC 246-800-15005 [296-800-15005].~~

~~Make sure appropriate first-aid supplies are readily available.~~

~~WAC 296-800-15020.~~

~~Make sure emergency washing facilities are functional and readily accessible.~~

~~WAC 296-800-15030.~~

~~Inspect and activate your emergency washing facilities.~~

~~WAC 296-800-15035.~~

~~Make sure supplemental flushing equipment provides sufficient water.~~

~~WAC 296-800-15040.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Make sure that first-aid trained personnel are available to provide quick and effective first aid</u> | <u>WAC 296-800-15005</u> |
| <u>Make sure appropriate first-aid supplies are readily available</u>                                    | <u>WAC 296-800-15020</u> |
| <u>Make sure emergency washing facilities are functional and readily accessible</u>                      | <u>WAC 296-800-15030</u> |
| <u>Inspect and activate your emergency washing facilities</u>  | <u>WAC 296-800-15035</u> |
| <u>Make sure supplemental flushing equipment provides sufficient water</u>                               | <u>WAC 296-800-15040</u> |

**Note:**

- Employers who require their employees to provide first aid must comply with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.
- Your workplace may be covered by separate first-aid rules. If you do any of the types of work listed below, you must follow separate industry specific rules:

| <b>Industry</b>             | <b>Chapter (WAC)</b> |
|-----------------------------|----------------------|
| Agriculture                 | 296-307              |
| Compressed air              | 296-36               |
| Construction                | 296-155              |
| Firefighting                | 296-305              |
| Logging                     | 296-54               |
| Sawmill                     | 296-78               |
| Ship building and repairing | 296-304              |

You can get copies of these rules by calling 1-800-4BE SAFE (1-800-423-7233), or by going to <http://www.lni.wa.gov>.

**AMENDATORY SECTION** (Amending WSR 04-07-160, filed 3/23/04, effective 5/1/04)

**WAC 296-800-15005 Make sure that first-aid trained personnel are available to provide quick and effective first aid.** You must(=) comply with the first-aid training requirements of 29 C.F.R. 1910.151(b) which states:

"In the absence of an infirmary, clinic, or hospital in near proximity to the workplace, which is used for the treatment of all injured employees, a person or persons (~~shall~~) **must** be adequately trained to render first aid."

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-15020 Make sure appropriate first-aid supplies are readily available.** (1) You must(=

•) **make** sure first-aid supplies are readily available.  
 ((•) (2) You **must** make sure first-aid supplies at your workplace are appropriate to:

- ((-) (a) Your occupational setting.
- ((-) (b) The response time of your emergency medical services.

**Note:** First-aid kits from your local retailer or safety supplier should be adequate for most nonindustrial employers.

- (3) You must(=
- ) **make** sure that first-aid supplies are:
  - ((-) (a) Easily accessible to all your employees.
  - ((-) (b) Stored in containers that protect them from damage, deterioration, or contamination. Containers must be clearly marked, not locked, and may be sealed.
  - ((-) (c) Able to be moved to the location of an injured or acutely ill worker.

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-800-15030 Make sure emergency washing facilities are functional and readily accessible.** (1) You must(=

•) **provide** an emergency shower:  
 ((-) (a) When there is potential for major portions of an employee's body to contact corrosives, strong irritants, or toxic chemicals.

((-) (b) That delivers water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for fifteen minutes or more.

((•) (2) You **must** provide an emergency eyewash:  
 ((-) (a) When there is potential for an employee's eyes to be exposed to corrosives, strong irritants, or toxic chemicals.

((-) (b) That irrigates and flushes both eyes simultaneously while the user holds their eyes open.

((-) (c) With an on-off valve that activates in one second or less and remains on without user assistance until intentionally turned off.

((-) (d) That delivers at least 0.4 gallons (1.5 liters) of water per minute for fifteen minutes or more.

**Note:** Chemicals that require emergency washing facilities:

- You can determine whether chemicals in your workplace require emergency washing facilities by looking at the safety data sheet (SDS) or similar documents. The SDS contains information about first-aid requirements and emergency flushing of skin or eyes.
- For chemicals developed in the workplace, the following resources provide information about first-aid requirements:
  - NIOSH Pocket Guide to Chemical Hazards
  - \*DHHS (NIOSH) Publication No. 97-140
  - \*<http://www.cdc.gov/niosh/npg/ggdstart.html>
  - Threshold Limit Values for Chemical Substances and Physical Agents American Conference of Governmental Industrial Hygienists (ACGIH)

(3) You must((:

•) make sure emergency washing facilities:

((-) (a) Are located so that it takes no more than ten seconds to reach.

((-) (b) Are kept free of obstacles blocking their use.

((-) (c) Function correctly.

((-) (d) Provide the quality and quantity of water that is satisfactory for emergency washing purposes.

**Note:**

- If water in emergency washing facilities is allowed to freeze, they will not function correctly. Precautions need to be taken to prevent this from happening.
- The travel distance to an emergency washing facility should be no more than fifty feet (15.25 meters).
- For further information on the design, installation, and maintenance of emergency washing facilities, see American National Standards Institute (ANSI) publication Z358.1 - 1998, *Emergency Eyewash and Shower Equipment*. Emergency washing facilities that are designed to meet ANSI Z358.1 - 1998 also meet the requirements of this standard. The ANSI standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

**Reference:**

- Training in the location and use of your emergency washing facilities is required under the hazard communication rule, WAC 296-901-140, and the accident prevention program rule, WAC 296-800-140.
- All emergency washing facilities using "not fit for drinking" (nonpotable) water must have signs stating the water is "not fit for drinking." See WAC 296-800-23010.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-15035 Inspect and activate your emergency washing facilities.** (1) You must((:

•) make sure all plumbed emergency washing facilities are inspected once a year to make sure they function correctly.

**Note:** Inspections should include:

- Examination of the piping
- Making sure that water is available at the appropriate temperature and quality
- Activation to check that the valves and other hardware work properly
- Checking the water flow rate.

(2) You must((:

•) make sure plumbed emergency eyewashes and hand-held drench hoses are activated weekly to check the proper functioning of the valves, hardware, and availability of water.

((\*) (3) You must make sure all self-contained eyewash equipment and personal eyewash units are inspected and maintained according to manufacturer instructions.

((-) (a) Inspections to check proper operation must be done once a year.

((-) (b) Sealed personal eyewashes must be replaced after the manufacturer's expiration date.

**Note:** Most manufacturers recommend replacing fluid in open self-contained eyewashes every six months. The period for sealed containers is typically two years.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-15040 Make sure supplemental flushing equipment provides sufficient water.**

**Note:** Supplemental flushing equipment cannot be used in place of required emergency showers or eyewashes.

(1) You must((:

•) make sure hand-held drench hoses deliver at least 3.0 gallons (11.4 liters) of water per minute for fifteen minutes or more.

**Note:** Why use a drench hose? A drench hose is useful when:

- The spill is small and does not require an emergency shower
- Used with a shower for local rinsing, particularly on the lower extremities.

(2) You must((:

•) make sure personal eyewash equipment delivers only clean water or other medically approved eye flushing solutions.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

**WAC 296-800-160 Summary.**

**Your responsibility:**

((⊕)) You must make sure that your employees have, use, and care for the appropriate personal protective equipment (PPE).

PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers.

((You must:

~~Do a hazard assessment for PPE.~~

~~WAC 296-800-16005.~~

~~Document your hazard assessment for PPE.~~

~~WAC 296-800-16010.~~

~~Select appropriate PPE for your employees.~~

~~WAC 296-800-16015.~~

~~Provide PPE to your employees.~~

~~WAC 296-800-16020.~~

~~Train your employees to use PPE.~~

~~WAC 296-800-16025.~~

~~Retrain employees to use PPE, if necessary.~~

~~WAC 296-800-16030.~~

~~Document PPE training.~~

~~WAC 296-800-16035.~~

~~Require your employees to use necessary PPE on the job.~~

~~WAC 296-800-16040.~~

~~Keep your PPE safe and in good condition.~~

~~WAC 296-800-16045.~~

~~Make sure your employees use appropriate face and eye protection.~~

~~WAC 296-800-16050.~~

~~Make sure your employees use appropriate head protection.~~

~~WAC 296-800-16055.~~

~~Make sure your employees use appropriate foot protection.~~

~~WAC 296-800-16060.~~

~~Make sure your employees use appropriate hand protection.~~

~~WAC 296-800-16065.~~

~~Make sure your employees are protected from drowning.~~

~~WAC 296-800-16070.)~~

| <u>You must meet the requirements ...</u>                               | <u>in this section:</u>  |
|---|--------------------------|
| <u>Compliance duties owed to each employee</u>                          | <u>WAC 296-800-16002</u> |
| <u>Do a hazard assessment for PPE</u>                                   | <u>WAC 296-800-16005</u> |
| <u>Document your hazard assessment for PPE</u>                          | <u>WAC 296-800-16010</u> |
| <u>Select appropriate PPE for your employees</u>                        | <u>WAC 296-800-16015</u> |
| <u>Provide PPE to your employees</u>                                    | <u>WAC 296-800-16020</u> |
| <u>Train your employees to use PPE</u>                                  | <u>WAC 296-800-16025</u> |
| <u>Retrain employees to use PPE, if necessary</u>                       | <u>WAC 296-800-16030</u> |
| <u>Document PPE training</u>  | <u>WAC 296-800-16035</u> |
| <u>Require your employees to use necessary PPE on the job</u>           | <u>WAC 296-800-16040</u> |
| <u>Keep PPE in safe and good condition</u>                              | <u>WAC 296-800-16045</u> |
| <u>Make sure your employees use appropriate eye and face protection</u> | <u>WAC 296-800-16050</u> |
| <u>Make sure your employees use appropriate head protection</u>         | <u>WAC 296-800-16055</u> |
| <u>Make sure your employees use appropriate foot protection</u>         | <u>WAC 296-800-16060</u> |
| <u>Make sure your employees use appropriate hand protection</u>         | <u>WAC 296-800-16065</u> |
| <u>Make sure your employees are protected from drowning</u>             | <u>WAC 296-800-16070</u> |

**Exemption:** • WAC 296-800-16015, 296-800-16025, 296-800-16030, and 296-800-16035 do not apply to electrical protective equipment or respiratory protection. See chapters 296-24 WAC, Part L and chapter 296-842 WAC, for rules about these types of protective equipment.

**AMENDATORY SECTION** (Amending WSR 09-15-145, filed 7/21/09, effective 9/1/09)

**WAC 296-800-16002 Compliance duties owed to each employee.** (1) You must provide personal protective

equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(2) You must provide training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16005 Do a hazard assessment for PPE.** You must((

•)) look for and identify hazards or potential hazards in your workplace and determine if PPE is necessary on the job.

**Note:** PPE alone should not be relied on to provide protection for your employees. PPE should be used after all other reasonable means of reducing hazards have been carried out. Identifying hazards in your workplace should be built into your regular routine. You should take active steps to get rid of all identified hazards. For example, you can:

- Consider other ways to get hazardous jobs done.
- Reduce hazardous materials or processes.
- Apply engineering controls to reduce or eliminate hazards.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16010 Document your hazard assessment for PPE.** You must((

•)) verify that a hazard assessment for PPE has been done at your workplace and complete a written certification (paper or electronic format) that includes the:

- ((-)) (1) Name of the workplace,
- ((-)) (2) Address of the workplace you inspected for hazards,
- ((-)) (3) Name of person certifying that a workplace hazard assessment was done,
- ((-)) (4) Date(s) the workplace hazard assessment was done,
- ((-)) (5) Statement identifying the document as the certification of hazard assessment for PPE for the workplace,

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-16015 Select appropriate PPE for your employees.** ((You must:)) (1) You must select appropriate PPE.

((★) (a) Select appropriate PPE for your employees if hazards are present, or likely to be present.

((★) (b) Select PPE for each at-risk employee to use for protection from the hazards identified in your workplace hazard assessment.

(2) You must select PPE that properly fits each at-risk employee.

**Note:** The hazards in your workplace have special rules that apply to them.

For information about PPE for specific workplaces, see these WISHA rule books:

|  |                     |
|--|---------------------|
| Construction Work                                | Chapter 296-155 WAC |
| Electrical Workers                               | Chapter 296-45 WAC  |
| Firefighters                                     | Chapter 296-305 WAC |
| General Occupational Health Standards            | Chapter 296-62 WAC  |
| General Safety and Health Standards              | Chapter 296-24 WAC  |
| Logging Operations                               | Chapter 296-54 WAC  |
| Pulp, Paper and Paper Board Mills and Converters | Chapter 296-79 WAC  |
| Ship Repairing, Ship Building and Shipbreaking   | Chapter 296-304 WAC |
| Ski Area Facilities and Operations               | Chapter 296-59 WAC  |
| Telecommunication                                | Chapter 296-32 WAC  |
| Textile Industry                                 | Chapter 296-301 WAC |

**Note:** For help in selecting PPE for your employees, you have several options. You may:

- Visit the OSHA web site <http://www.osha-slc.gov/SLTC/personalprotectiveequipment/index.html>.
- Call 1-800-4BE SAFE (1-800-423-7233) for guidelines for selecting PPE.
- Consult with safety and health professionals knowledgeable in this area. See resource section for links to professional organizations.
- Discuss PPE choices with your employees.

**AMENDATORY SECTION** (Amending WSR 09-05-071, filed 2/17/09, effective 4/1/09)

**WAC 296-800-16020 Provide PPE to your employees.** You must provide PPE at no cost to employees if the PPE is:

((★) (1) The type that would not reasonably or normally be worn away from the workplace, such as single use or disposable PPE.

((★) (2) Required to comply with a safety and health standard to protect employees wherever hazards exist from:

- ((-) (a) Processes;
- ((-) (b) Environmental hazards;
- ((-) (c) Physical, chemical, or radiological hazards; or
- ((-) (d) Mechanical irritants that could cause injury or impairment to the function of any body part through absorption, inhalation, or physical contact.

**Table-X: Employer Responsibility for Providing PPE**

**\*This table provides examples only and is not all-inclusive.**

| Part of Body        | PPE employers are required to provide at no cost to employees.   | Items in which employer payment is not required.  |
|---------------------|--|---|
| <b>Head</b>         | Bump caps.<br>Hard hat.<br>Nonconductive head protection.  | —   |
| <b>Eye and Face</b> | Face shields.<br>Goggles.<br>Laser safety goggles.<br>Nonprescription eye protection.<br>Prescription eyewear inserts/lenses for full-face respirators.<br>Welding and diving helmets.   | Nonspecialty prescription safety eyewear.   |
| <b>Ear</b>          | Hearing protection.  | —   |
| <b>Hand/ Arm</b>    | Aluminized gloves.<br>Barrier creams (unless used solely for weather-related protection).<br>Chemical resistant gloves/aprons/clothing.<br><br>Mesh cut proof gloves.<br>Mesh or leather aprons.<br>Nonspecialty gloves if required to protect from dermatitis, severe cuts, or abrasions.<br>Rubber insulating gloves.<br>Rubber sleeves. | Hand protection used only for keeping clean or for cold weather with no safety or health consideration.   |
| <b>Foot</b>         | Metatarsal foot protection.<br>Rubber boots with steel toes.<br>Shoe covers - Toe caps and metatarsal guards.<br>Special boots for long-shoremen working logs.   | Nonspecialty safety-toe protective footwear such as steel-toe shoes or boots.<br>Sturdy work shoes.<br>Lineman's boots.<br>Logging boots required under chapter 296-54 WAC. |

| Part of Body | PPE employers are required to provide at no cost to employees.   | Items in which employer payment is not required.   |
|--------------|--|--|
| <b>Other</b> | <p>Atmosphere-supplying respirators (escape only). Climbing ensembles used by linemen such as belts and climbing hooks.</p> <p>Level A - Fully encapsulated chemical protective suits.</p> <p>Level B - Chemical protective clothing.</p> <p>Personal fall arrest systems.</p> <p>Personal fall restraint systems.</p> <p>Firefighting PPE (helmet, gloves, boots, proximity suits, full gear).</p> <p>Ladder safety device belts.</p> <p>Personal floatation devices (life jackets).</p> <p>Class II or III high visibility garments that meet ANSI 107-2004 specifications.</p> <p>Respiratory protection. SCBA (self-contained breathing apparatus).</p> <p>Welding PPE.</p> <p>Window cleaner's safety straps.</p> <p>Items such as aprons, lab coats, goggles, disposable gloves, shoe covers, etc., used in medical/laboratory settings to protect from exposure to infectious agents.</p> | <p>Long sleeve shirts.</p> <p>Long pants.</p> <p>Ordinary cold weather gear (coats, parkas, cold weather gloves, winter boots).</p> <p>Ordinary rain gear.</p> <p>Dust mask/respirators used under the voluntary use provisions in chapter 296-842 WAC.</p> <p>Back belts. Sunglasses.</p> <p>Sunscreen.</p> |

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-16025 Train your employees to use PPE.** (1) You must(☞

- ☛) communicate your PPE selection decision to each at-risk employee.
- (☛) (2) You must provide training to each employee who is required to use PPE on the job. Each affected employee must be trained to know at least the following:
  - (☞) (a) When PPE is necessary,

- (☞) (b) What PPE is necessary.
- (☞) (c) How to put on, take off, adjust, and wear PPE.
- (☞) (d) Limitations of PPE.
- (☞) (e) Proper care, maintenance, useful life, and disposal of PPE.
- (☛) (3) Make sure before an employee is allowed to perform work requiring the use of PPE that the employee can:
  - (☞) (a) Demonstrate an understanding of the training specified above; and
  - (☞) (b) Demonstrate the ability to use PPE properly.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16030 Retrain employees to use PPE, if necessary.** You must(☞

- ☛) retrain an employee when you have reason to believe the understanding, motivation, and skills required to use the PPE has not been retained. Circumstances where retraining is required include:
  - (☞) (1) Changes in the workplace that make previous training out of date.
  - (☞) (2) Changes in the types of PPE to be used make previous training out of date.
  - (☞) (3) Work habits or demonstrated knowledge indicate that the employee has not retained the necessary understanding, skill, or motivation to use PPE.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16035 Document PPE training.** You must(☞

- ☛) document in writing that each employee using PPE has received and understood the required training. This documentation must include:
  - (☞) (1) Name of each employee.
  - (☞) (2) Date(s) of training.
  - (☞) (3) Subject of the training.

**Note:** Documentation may be stored on a computer as long as it is available to safety and health personnel from the department of labor and industries.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16040 Require your employees to use necessary PPE on the job.** You must(☞

- ☛) require your employees to use necessary PPE on the job.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16045 Keep PPE in safe and good condition.** (1) You must(☞

- ☛) make sure all PPE is safe for the work to be performed. It must:
  - (☞) (a) Be durable.
  - (☞) (b) Fit snugly.
  - (☞) (c) Not interfere with the employee's movements.

((\*) (2) You must make sure PPE is used and maintained in a clean and reliable condition.

((-) **Defective equipment MUST NOT be used.**

((\*) (3) You must make sure if employees provide their own PPE, that it is adequate for the workplace hazards, and maintained in a clean and reliable condition.

AMENDATORY SECTION (Amending WSR 10-09-088, filed 4/20/10, effective 6/1/10)

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.** (1) You must ((-

\*) make sure that employees exposed to hazards that could injure their eyes and/or face use appropriate protection. Examples of these hazards include:

((-) (a) Flying particles.

((-) (b) Molten metal.

((-) (c) Liquid chemicals.

((-) (d) Acids or caustic liquids.

((-) (e) Chemical gases or vapors.

((-) (f) Any light that could injure the eyes such as lasers, ultraviolet, or infrared light.

((-) (g) Objects that puncture.

((\*) (2) You must make sure employees exposed to hazards from flying objects have eye protection with side protection, such as safety glasses with clip-on or slide-on side shields.

((\*) (3) You must make sure eye protection for employees who wear prescription lenses:

((-) (a) Incorporates the prescription into the design of the eye protection; or

((-) (b) Is large enough to be worn over the prescription lenses without disturbing them.

((\*) (4) You must make sure PPE used to protect the eyes and face meet the specifics of either the 1989 version, the 1998 revision, or the 2003 version of ANSI Z87.1, American National Standard Practice for Occupational and Educational Eye and Face Protection.

(5) Other protective eye and face protection devices may be used if the employer demonstrates that they are at least as effective as those constructed in accordance with one of the above consensus standards.

**Note:** ANSI is the American National Standards Institute that publishes nationally recognized safety and health requirements. Their address is:

ANSI (American National Standards Institute)

1819 L Street NW

Washington, DC 20036

Phone: ((202)) 202-293-8020

Fax: ((202)) 202-293-9287

<http://www.ansi.org>

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-800-16055 Make sure your employees use appropriate head protection.** ((You must\*)) (1) You must make sure employees wear appropriate protective helmets.

((\*) (a) Where employees are exposed to hazards that could cause a head injury. Examples of this type of hazard include:

((-) (i) Flying or propelled objects.

((-) (ii) Falling objects or materials.

((\*) (b) Where employees are working around or under scaffolds or other overhead structures.

(2) Head protection must comply with any of the following consensus standards:

(a) American National Standards Institute (ANSI) Z89.1-2009, "American National Standard for Industrial Head Protection";

(b) American National Standards Institute (ANSI) Z89.1-2003, "American National Standard for Industrial Head Protection";

(c) American National Standards Institute (ANSI) Z89.1-1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements."

((-) (d) You may use protective helmets that do not meet these ANSI standards if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSIs.

(3) You must make sure employees working near exposed electrical conductors that could contact their head wear a protective helmet designed (that meet the above ANSI standards) to reduce electrical shock hazard.

((\*) Caps with metal buttons or metal visors must **not** be worn around electrical hazards.

(4) You must make sure employees working around machinery or in locations that present a hair-catching or fire hazard wear caps or head coverings that completely cover their hair.

((\*) (a) Employees must wear a hair net that controls all loose ends when:

((-) (i) Hair is as long as the radius of pressure rolls with exposed in-running nip points.

((-) (ii) Hair is twice as long as the circumference of exposed revolving shafts or tools in fixed machines.

((\*) (b) Employees must wear a hair covering of solid material when:

((-) The employee is exposed to an ignition source and may run into an area containing category 1 or 2 flammable liquids, such as ether, benzene, or category 3 flammable liquids with a flashpoint between 100°F (37.8°C), or combustible atmospheres if their hair is on fire.

AMENDATORY SECTION (Amending WSR 10-09-088, filed 4/20/10, effective 6/1/10)

**WAC 296-800-16060 Make sure your employees use appropriate foot protection.** ((You must\*)) (1) You must use appropriate foot protection.

((\*) (a) Where employees are exposed to hazards that could injure their feet. Examples of these hazards are:

((-) (i) Falling objects,

((-) (ii) Rolling objects,

((-) (iii) Piercing/cutting injuries,

((-) (iv) Electrical hazards,

(\*) (b) That meets the specifications of one of the following consensus standards:

(\*) (i) ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.

(\*) (ii) ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.

(\*) (iii) ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

(-) (c) Protective footwear that does not meet these standards may be used if you demonstrate that it is equally effective as that constructed in accordance with one of the above consensus standards.

(2) You must make sure your employees wear calks or other suitable footwear to protect against slipping while they are working on top of logs.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16065 Make sure your employees use appropriate hand protection.** (1) You must(

\*) make sure employees exposed to hazards that could injure their hands use appropriate hand protection. Examples of these hazards include:

(-) (a) Absorbing harmful substances,

(-) (b) Severe cuts, lacerations or abrasions,

(-) (c) Punctures,

(-) (d) Chemical burns and/or thermal burns,

(-) (e) Harmful temperature extremes,

(\*) (2) You must make sure when choosing hand protection, you consider how well the hand protection performs relative to the:

(-) (a) Task,

(-) (b) Conditions present,

(-) (c) Duration of use,

(-) (d) Hazards,

(-) (e) Potential hazards,

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-16070 Make sure your employees are protected from drowning.** (~~You must~~) (1) You must provide and make sure your employees wear personal flotation devices (PFD)(

\*) when they work in areas where the danger of drowning exists, such as:

(-) (a) On the water.

(-) (b) Over the water.

(-) (c) Alongside the water.

**Note:** Employees are not exposed to the danger of drowning when:

- Employees are working behind standard height and strength guardrails.
- Employees are working inside operating cabs or stations that eliminate the possibility of accidentally falling into the water.
- Employees are wearing an approved safety belt with a lifeline attached that prevents the possibility of accidentally falling into the water.

(2) You must(

\*) provide your employees with PFDs approved by the United States Coast Guard for use on commercial or merchant vessels. The following are appropriate or allowable United States Coast Guard-approved PFDs:

| Type of PFD | General Description  |
|-------------|--|
| Type I      | Off-shore life jacket - Effective for all waters or where rescue may be delayed.                                 |
| Type II     | Near-shore buoyant vest - Intended for calm, inland water or where there is a good chance of quick rescue.       |
| Type III    | Flotation aid - Good for calm, inland water, or where there is a good chance of rescue.                          |
| Type V      | Flotation aids such as boardsailing vests, deck suits, work vests and inflatable PFDs marked for commercial use. |

**Note:**

- Commercially available PFDs are marked or imprinted with the type of PFD.
- Type IV PFDs are throwable devices. They are used to aid persons who have fallen into the water.

(3) You must(

\*) inspect PFDs before and after each use for defects and make sure that defective PFDs are not used.

((2)) (4) You must provide approved life rings with an attached line on all docks, walkways, and fixed installations on or adjacent to water more than five feet deep.

(\*) (a) Life rings must:

(-) (i) Be United States Coast Guard approved 30 inch size.

(-) (ii) Have attached lines that are at least 90 feet in length.

(-) (iii) Have attached lines at least 1/4 inch in diameter.

(-) (iv) Have attached lines with a minimum breaking strength of 500 pounds.

(-) (v) Be spaced no more than 200 feet apart.

(-) (vi) Be kept in easily visible and readily accessible locations.

(\*) (b) Life rings and attached lines must:

(-) (i) Be maintained to retain at least 75 percent of their designed buoyancy and strength.

(-) (ii) Be provided in the immediate vicinity when employees are assigned work at other casual locations where the risk of drowning exists.

(-) (c) Work assigned over water where the vertical drop from an accidental fall would be more than 50 feet, must be subject to specific procedures as approved by the department.

**AMENDATORY SECTION** (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-800-180 Safety data sheets (SDSs) as exposure records.** Important: Exposure records contain information about employees' exposure to toxic substances or harmful physical agents. Safety data sheets (SDSs) are one type of

exposure record. The preservation of and access to exposure records is necessary to improve detection, treatment, and prevention of occupational diseases.

This rule supplements the chemical hazard communication rule by extending access to SDSs, or their alternative, after employment and after the hazardous chemical is no longer used in the workplace.

**Your responsibility:**

~~((T))~~ **You must** preserve and provide access to safety data sheets (SDSs) or their alternative as exposure records.

~~((You must:~~

~~Preserve exposure records for at least thirty years.  
WAC 296-800-18005.~~

~~Inform current employees of exposure records.  
WAC 296-800-18010.~~

~~Provide access to exposure records.  
WAC 296-800-18015.~~

~~Transfer records when ceasing to do business.  
WAC 296-800-18020.)~~

| <u>You must meet the requirements ...</u>                  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Preserve exposure records for at least thirty years</u> | <u>WAC 296-800-18005</u> |
| <u>Inform current employees of exposure records</u>        | <u>WAC 296-800-18010</u> |
| <u>Provide access to exposure records</u>                  | <u>WAC 296-800-18015</u> |
| <u>Transfer records when ceasing to do business</u>        | <u>WAC 296-800-18020</u> |

- Note:**
- Employee medical and exposure records, chapter 296-802 WAC, requires the preservation and access to other exposure records including records such as workplace monitoring data and biological monitoring results and medical records. If you keep these other types of employee exposure records or employee medical records, you must comply with these additional requirements.
  - This rule applies to every employer who maintains, makes, contracts for, or has access to SDSs for chemicals used in their workplace.
  - The specific identity of a toxic substance may be withheld from a disclosable record if it is a verifiable trade secret. For trade secret requirements see WAC 296-901-14018 Trade secrets.

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-800-18005 Preserve exposure records for at least ~~((30))~~ thirty years.** You must(~~(:~~

~~(\*)~~ **keep** safety data sheets (SDSs) and analysis using SDSs for at least thirty years, including current, former, and future employers receiving transferred records. Preserve SDSs in any form, as long as the information is not altered and is retrievable. You may keep alternative records instead of SDSs concerning the identity of a substance. The alternative record must also be kept for thirty years and contain the following information:

- ~~((-))~~ (1) Some record of the identity (chemical name, if known) of a substance or agent.
- ~~((-))~~ (2) Where the substance or agent was used.
- ~~((-))~~ (3) When the substance or agent was used.

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-800-18010 Inform current employees of exposure records.** (1) You must(~~(:~~

~~(\*)~~ **inform** current employees who are, or will be exposed to a toxic chemical of:

- Note:**
- A chemical is toxic if:
    - The latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) lists the substance. This may be obtained online, CD-ROM, or on a computer tape.
    - Testing by or known to the employer has shown positive evidence that the substance is an acute or chronic health hazard.
    - A safety data sheet (SDS) kept by or known to the employer shows the material may be a hazard to human health.

~~((-))~~ (a) The existence, location, and availability of SDSs or alternative records, and any other records covered by this rule.

~~((-))~~ (b) The person responsible for maintaining and providing access to records.

~~((-))~~ (c) Exposure records when the employee first enters into employment and then once a year thereafter.

~~((-))~~ (d) Existence and their rights of access to these records.

**Note:** Informing employees of the availability of these records may be accomplished by posting, group discussion or by individual notifications.

(2) You must(~~(:~~  
~~(\*)~~ **keep** a copy of this rule and make copies available upon request to employees.

~~((\*)~~ (3) **You must** distribute to employees any informational materials about this rule that are made available to the employer by the department.

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-800-18015 Provide access to exposure records.** (1) You must(~~(:~~

~~(\*)~~ **provide** access, whenever requested by an employee or their designated representative, to a relevant exposure record:

~~((-))~~ (a) In a reasonable time, place, and manner.

~~((-))~~ (b) Within fifteen working days. If the employer cannot meet this requirement, they must inform the requesting party of the reason for the delay and the earliest date the record will be made available.

- Note:**
- Employee means any current, former or transferred worker.
  - A relevant exposure record is an SDS or its alternative or analysis using SDSs or their alternative.

(2) You must(~~(:~~  
~~(\*)~~ **make** sure labor and industries has prompt access to any exposure records and related analysis. This must be done

without violation of any rights under the Constitution or the Washington Industrial Safety and Health Act that the employer chooses to exercise.

**Note:** Nothing in this rule is meant to prevent employees and collective bargaining agents from getting access to information beyond that is required by this rule.

(3) You must(=

•) make sure that whenever an employee or designated representative requests an initial copy of an exposure record, related analysis or new information added to the record:

((-) (a) A copy of the record is provided without cost to the employee or their representative; or

((-) (b) The facilities are made available for copying without cost to the employee or their representative; or

((-) (c) The record is loaned to the employee or their representative for a reasonable time to enable a copy to be made.

**Note:** Whenever a record has been previously provided without cost to an employee or designated representative, and they request additional copies, the employer may charge reasonable, non-discriminatory administrative costs (e.g., search and copying expenses, but no overhead expenses).

AMENDATORY SECTION (Amending WSR 17-02-066, filed 1/3/17, effective 2/3/17)

**WAC 296-800-18020 Transfer records when ceasing to do business.** (1) You must(=

•) transfer all safety data sheets (SDSs) as exposure records to the successor employer, who must do the following to these records:

((-Received

-)) (a) Received.

(b) Preserve.

((-) (c) Keep unchanged.

((•) (2) You must if there is no successor to receive and preserve the employee exposure records:

((-) (a) Notify affected current employees of their rights of access to records at least 3 months prior to the cessation of the employer's business; and

((-) (b) Transfer the records to the department, if required by a specific WISHA safety and health rule.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-190 Summary/rule.** ((Your responsibility: To)) You must provide a safety bulletin board.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-19005 Provide a safety bulletin board in your workplace.** You must(=

•) install and maintain a safety bulletin board in every fixed workplace (establishment) that has eight or more employees. Make sure the safety bulletin board is large enough to post information such as the following:

((-) (1) Safety bulletins.

((-) (2) Safety newsletters.

((-) (3) Safety posters.

((-) (4) Accident statistics.

((-) (5) Other safety educational material.

**Note:** You may want to post your emergency phone numbers on the safety bulletin board.

### **((WISHA)) JOB SAFETY AND HEALTH LAW POSTER**

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-200 ((WISHA)) Job safety and health law poster.** ((Your responsibility: To)) You must post the ((WISHA)) job safety and health law poster, which informs your employees of their job safety and health protection rights.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-20005 Post and keep a ((WISHA)) job safety and health law poster in your workplace.** You must(=

•) post it where it can easily be seen by employees and keep it in good condition.

**Note:**

- Other programs within labor and industries may require other workplace posters. These are:
  - Job safety and health protection
  - ((AND))
  - Notice to employees—If a job injury occurs
  - ((AND))
  - Your rights as a nonagricultural worker
  - You can obtain a free copy of labor and industries posters from any labor and industries office or by printing it off our web site ((<http://www.lni.wa.gov/ipub/101-054-000.htm>)) <https://www.lni.wa.gov/FormPub/Detail.asp?DocID=1738>). You can find the labor and industries office closest to you by:
    - Checking the resource section of this book for regional offices(=); or
    - ((OR))
    - Calling 1-800-4BE SAFE (1-800-423-7233).
    - ((OR
    - <http://www.lni.wa.gov/wisha/question.htm#contact>))

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-21005 Provide and maintain adequate lighting.**

**Note:** This section establishes minimal levels of lighting for safety purposes only. Guidelines pertaining to optimal levels of lighting and illumination may be found in Practice for Industrial Lighting, ANSI/IES RP7-1979. (See the resource section of this book on how to contact ANSI.)

(1) You must(=

•) Provide and maintain adequate lighting for all work activities in your workplace. See the following table.

| Lighting Table                                 |   |   |
|--|---|---|
| Activity                                       | Minimum acceptable average lighting level in an area:<br><br>(Foot-candles) | Any one single measurement used to determine the average lighting level* cannot be less than:<br><br>(Foot-candles) |
| Indoor task                                    | 10  | 5   |
| Outdoor task                                   | 5   | 2.5   |
| Nontask activities for both indoor and outdoor | 3   | 1.5   |

\* Lighting levels must be measured at thirty inches above the floor/work-ing surface at the task.

(2) You must(=) have adequate light for employees to see nearby objects that might be potential hazards or to see to operate emergency controls or other equipment, if general lighting is not available.

- Note:**
- Lighting levels can be measured with a light meter.
  - Conversion information: 1 foot-candleEhard = 1 lumen incident per square foot = 10.76 lux.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-220 Housekeeping, drainage, and storage—Summary.**

**Your responsibility:**

To provide your employees with a clean, dry, pest-free workplace.

**Note:** The introduction has important information about building, electrical and fire codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to building, fire, and electrical codes" in the introduction section of this book.

((You must:

**Housekeeping**

~~Keep your workplace clean.~~

~~WAC 296-800-22005.~~

~~Sweep and clean your workplace to minimize dust.~~

~~WAC 296-800-22010.~~

~~Keep your workplace free of obstacles that interfere with cleaning.~~

~~WAC 296-800-22015.~~

~~Control pests in your workplace.~~

~~WAC 296-800-22020.~~

~~Make sure floors are maintained in a safe condition.~~

~~WAC 296-800-22022.~~

**Drainage**

~~Keep your workroom floors dry, when practical.~~

~~WAC 296-800-22025.~~

~~Provide proper drainage.~~

~~WAC 296-800-22030.~~

**Storage areas**

~~Store things safely.~~

~~WAC 296-800-22035.~~

~~Control vegetation in your storage areas.~~

~~WAC 296-800-22040.)~~

| <u>You must meet the requirements ...</u>                                 | <u>in this section:</u>  |
|---|--------------------------|
| <b>Housekeeping</b>   |                          |
| <u>Keep your workplace clean</u>  | <u>WAC 296-800-22005</u> |
| <u>Sweep and clean your workplace to minimize dust</u>                    | <u>WAC 296-800-22010</u> |
| <u>Keep your workplace free of obstacles that interfere with cleaning</u> | <u>WAC 296-800-22015</u> |
| <u>Control pests in your workplace</u>                                    | <u>WAC 296-800-22020</u> |
| <u>Make sure floors are maintained in a safe condition</u>                | <u>WAC 296-800-22022</u> |
| <b>Drainage</b>   |                          |
| <u>Keep your workroom floors dry, when practical</u>                      | <u>WAC 296-800-22025</u> |
| <u>Provide proper drainage</u>  | <u>WAC 296-800-22030</u> |
| <b>Storage areas</b>  |                          |
| <u>Store things safely</u>  | <u>WAC 296-800-22035</u> |
| <u>Control vegetation in your storage areas</u>                           | <u>WAC 296-800-22040</u> |

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22005 Keep your workplace clean.**

You must(=)

(\*) keep all areas of you workplace, passageways, storage rooms, and service rooms in a clean, orderly and sanitary condition to the extent the nature of the work allows.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22010 Sweep and clean your workplace to minimize dust. (1) You must(=)**

(\*) sweep and clean your workplace in a way that minimizes dust in the air as much as possible.

((\*) (2) You must, when practical, clean after hours so that your employees are not exposed to dust in the air on the job.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22015 Keep your workplace free of obstacles that interfere with cleaning.** You must((: (

•)) keep your workplace clear of obstructions such as nails, splinters, loose boards and unnecessary holes and openings to make cleaning easier and more effective.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-22020 Control pests in your workplace.** (1) You must((: (

•)) make sure each building in your workplace is constructed, equipped and maintained so it restricts pests from entering or living in it. Pests include animals such as:

- ((-) (a) Rodents (rats, mice, and squirrels).
- ((-) (b) Birds (starlings, pigeons, and swallows).
- ((-) (c) Insects (bees, wasps, and mosquitoes).

((•) (2) You must take steps to effectively control pests in your workplace, if they are detected.

((-) Carry out a continuing and effective control program in the areas of your workplace where pests have been detected.

**Note:**

- By handling dead or live pests including their waste products, attached parasites and other contaminated materials, your employees may be exposed to certain health risks. These risks include, but are not limited to: Hanta virus, rabies, Lyme disease and psittacosis. Contact your local L&I office (see resource section of this book) or the public health department for more information about health risks and proper pest handling and disposal techniques.
- "Workplace" includes storage areas.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22022 Make sure floors are maintained in a safe condition.** (1) You must((: (

•)) make sure floors are kept free of debris. This includes:

- ((-) (a) Buildings.
- ((-) (b) Platforms.
- ((-) (c) Walkways and driveways.
- ((-) (d) Storage yards.

((-) (e) Docks.

((•) (2) You must use a nonslip coating on all polished floors.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22025 Keep your workroom floors dry, when practical.** You must((: (

•)) do the following to help keep your employees dry if wet processes are used in your work area:

- ((-) (1) Maintain drainage away from the work area; and
- ((-) (2) Provide false floors, platforms, or other dry places where employees can stand, where practical((: ( or
- ((-) (3) Provide appropriate waterproof footwear.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22030 Provide proper drainage.** You must((: (

•)) provide all areas where employees work, such as yards, basements, or garages, with adequate drainage.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22035 Store things safely.** (1) You must((: (

•)) store materials so they do not create a hazard.

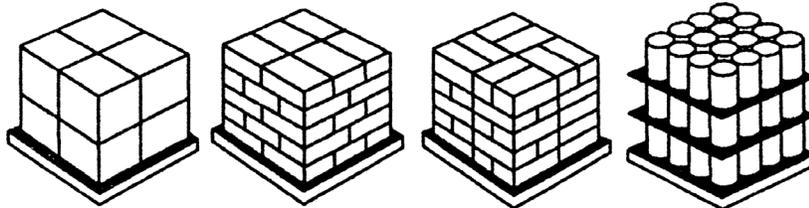
((•) (2) You must keep workplace storage areas free from accumulation of materials that could create hazards from tripping, fire, or explosion.

((•) (3) You must secure stored items such as bundles, containers, and bags to prevent them from falling, sliding, or collapsing by doing one or more of the following:

- ((-) (a) Stacking.
- ((-) (b) Racking.
- ((-) (c) Blocking.
- ((-) (d) Interlocking.
- ((-) (e) Otherwise securing them.

((•) (4) You must make sure stored items are limited in height so that they are stable and secure to prevent sliding or collapse.

**Examples of Proper Material Storage**



**Block Pattern**

**Brick**

**Pinwheel**

**Rigid Spacer**

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-22040 Control vegetation in your storage areas.** You must((  
 •) control vegetation in your storage areas when necessary to create a safe working environment.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-230 Summary.**

**Your responsibility:**

((~~☐~~)) You must provide safe drinking (potable) water, bathrooms, washing facilities, eating areas and garbage and waste disposal in your workplace.

((~~You must:~~))

**General requirements for all workplaces.**

((~~Drinking water~~

Provide safe drinking (potable) water in your workplace.  
~~WAC 296-800-23005.~~

Clearly mark water outlets that are not fit for drinking (nonpotable).

~~WAC 296-800-23010.~~

Make sure systems delivering not fit for drinking (nonpotable) water prevent backflow into drinking water systems.

~~WAC 296-800-23015.~~

**Bathrooms and washing facilities**

Provide bathrooms for your employees.

~~WAC 296-800-23020.~~

Provide convenient, clean washing facilities.

~~WAC 296-800-23025.~~

**Eating areas and food service**

Make sure eating areas are safe and healthy.

~~WAC 296-800-23040.~~

Follow these requirements if you provide food service to your employees.

~~WAC 296-800-23045.~~

**Garbage and waste disposal**

Dispose of garbage and waste safely.

~~WAC 296-800-23050.~~

Remove garbage and waste in a way that does not create a health hazard.

~~WAC 296-800-23055.~~

**Lunchrooms and personal service rooms**

Provide a separate lunchroom if employees are exposed to toxic substances if they are allowed to eat and drink on the job site.

~~WAC 296-800-23060.~~

Provide showers when required for employees working with chemicals.

~~WAC 296-800-23065.~~

Provide change rooms when required.

~~WAC 296-800-23070.~~

Make sure any work clothes you provide are dry.

~~WAC 296-800-23075.))~~

| <u>You must meet the requirements...</u>  | <u>in this section:</u>  |
|---|--------------------------|
| <b><u>Drinking water</u></b>  |                          |
| <u>Provide safe drinking (potable) water in your workplace</u>  | <u>WAC 296-800-23005</u> |
| <u>Clearly mark water outlets that are not fit for drinking (nonpotable)</u>  | <u>WAC 296-800-23010</u> |
| <u>Make sure that systems delivering not-fit-for-drinking (nonpotable) water prevent backflow into drinking water systems</u>         | <u>WAC 296-800-23015</u> |
| <b><u>Bathrooms and washing facilities</u></b>  |                          |
| <u>Provide bathrooms for your employees</u>   | <u>WAC 296-800-23020</u> |
| <u>Provide convenient and clean washing facilities</u>  | <u>WAC 296-800-23025</u> |
| <b><u>Eating areas and food service</u></b>   |                          |
| <u>Make sure eating areas are safe and healthy</u>  | <u>WAC 296-800-23040</u> |
| <u>Follow these requirements if you provide food service to your employees</u>  | <u>WAC 296-800-23045</u> |
| <b><u>Garbage and waste disposal</u></b>  |                          |
| <u>Dispose of garbage and waste safely</u>  | <u>WAC 296-800-23050</u> |
| <u>Remove garbage and waste in a way that does not create a health hazard</u>   | <u>WAC 296-800-23055</u> |
| <b><u>Lunchrooms and personal service rooms</u></b>   |                          |
| <u>Provide a separate lunchroom if employees are exposed to toxic substances if they are allowed to eat and drink on the job site</u> | <u>WAC 296-800-23060</u> |
| <u>Provide showers when required for employees working with chemicals</u>   | <u>WAC 296-800-23065</u> |
| <u>Provide change rooms when required</u>   | <u>WAC 296-800-23070</u> |
| <u>Make sure any work clothes you provide are dry</u>   | <u>WAC 296-800-23075</u> |

**Note:** Some industries may have additional rules on bathrooms and washing facilities. Some examples include:

|  |                     |
|--|---------------------|
| Industry   | WAC                 |
| Agriculture; indoor sanitation and temporary labor camps | chapter 296-307 WAC |

| Industry   | WAC               |
|--|-------------------|
| Carcinogens; general regulated area requirements | WAC 296-62-07308  |
| Charter boats                                    | WAC 296-115-050   |
| Compressed air work                              | WAC 296-36-160(5) |
| Construction                                     | WAC 296-155-140   |
| Temporary labor camps                            | WAC 296-24-12507  |

**AMENDATORY SECTION** (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23005 Provide safe drinking (potable) water in your workplace. ((You must:))** (1) You must provide safe drinking (potable) water for employees for:

- ((\*) (a) Washing themselves.
  - ((\*) (b) Personal service rooms.
  - ((\*) (c) Cooking.
  - ((\*) (d) Washing premises where food is prepared or processed.
  - ((\*) (e) Washing food, eating utensils, or clothing.
- (2) You must make sure when providing movable or portable drinking water dispensers that they are:
- ((\*) (a) Capable of being closed.
  - ((\*) (b) Kept in sanitary condition.
  - ((\*) (c) Equipped with a tap.
- (3) You must prohibit employees from:
- ((\*) (a) Using shared drinking cups or utensils.
  - ((\*) (b) Using open containers such as barrels, pails, and tanks that require employees to dip or pour drinking water, even if the containers have covers.

**Definition:**

((\*) Potable water ((is)). Water that you can safely drink that meets specific safety standards prescribed by the United States Environmental Protection Agency's *National Interim Primary Drinking Water Regulations*, published in 40 C.F.R. Part 141, and 40 C.F.R. 147.2400.

((\*) Personal service rooms are used for activities not directly connected with a business' production or service function such as first aid, medical services, dressing, showering, bathrooms, washing and eating.

**AMENDATORY SECTION** (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23010 Clearly mark the water outlets that are not fit for drinking (nonpotable). ((You must:))**

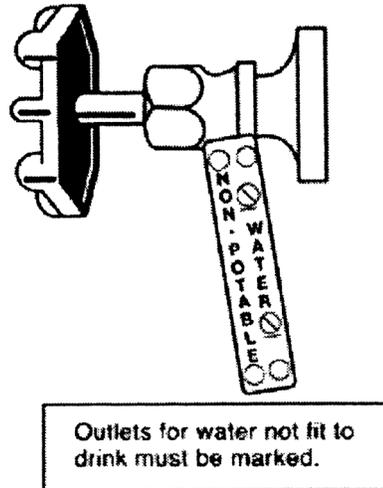
- (1) You must mark water outlets that are not fit for drinking (nonpotable), such as those used for industrial processes or firefighting, so they will not be used for:
- ((\*) (a) Drinking.
  - ((\*) (b) Washing themselves, except in emergencies.
  - ((\*) (c) Cooking.
  - ((\*) (d) Washing food, eating utensils, or clothing.
- (2) You must prohibit the use of nonpotable water containing substances that could create unsafe conditions such as:
- ((\*) (a) Concentrations of chemicals, such as lead or chlorine.

((\*) (b) Fecal coliform bacteria.

**Note:** As long as the nonpotable water is free of substances that could create unsafe conditions, the water can be used for cleaning both:

- Work premises used for activities other than food preparation or processing; and
- ((AND))
- Personal service rooms, such as bathrooms.

**Reference:** You may need to follow additional requirements for emergency washing facilities. See WAC 296-800-150 First aid, for more information.



**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-23015 Make sure that systems delivering not-fit-for-drinking (nonpotable) water prevent backflow into drinking water systems. You must((:**

\*) make sure that systems delivering not-fit-for-drinking (nonpotable) water prevent backflow into drinking water systems.

**AMENDATORY SECTION** (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23020 Provide bathrooms for your employees.**

**Exemption:** You do not have to provide bathrooms: For mobile crews or at work locations not normally attended by employees, if there is transportation immediately available to nearby bathrooms that meet the requirements of this section.

((You must:))

(1) You must provide bathrooms with the appropriate number of toilets for your employees at every workplace based on Table 1.

((\*) (2) You must have an appropriate number of toilets for each gender, based on the number of male and female employees at your workplace.

((-)) For example, if you have thirty-seven men and seventeen women, you need to have three toilets for the men and two toilets for the women, based on Table 1.

((\*) (3) You must make sure each toilet is in a separate compartment with a door and walls or partitions for privacy.

**Table 1**  
**Required Number of Employee Toilets at Every Workplace**

| Maximum Number of Employees Present at Any One Time During a Shift | Minimum Number of Toilets Required                     |
|--|--|
| 1 to 15  | 1  |
| 16 to 35   | 2  |
| 36 to 55   | 3  |
| 56 to 80   | 4  |
| 81 to 110  | 5  |
| 111 to 150   | 6  |
| Over 150   | One additional toilet for each additional 40 employees |

**Note:** A shared bathroom (multiple toilets without enclosures) counts as one toilet no matter how many toilets it contains. In bathrooms used only by men, urinals may be substituted for up to 1/3 of the required toilets.

~~((You must~~  
~~(2))~~ (4) You must provide toilet paper and a toilet paper roll holder for each toilet.

~~((3))~~ (5) You must make sure bathrooms are maintained in a clean and sanitary condition.

~~((4))~~ (6) You must make sure the sewage disposal method does not endanger the health of employees.

**Exemption:** Separate bathrooms for men and women are not required if the bathroom:

- Will only be occupied by one person at a time.
- Can be locked from the inside.
- Contains at least one toilet.

AMENDATORY SECTION (Amending WSR 12-24-071, filed 12/4/12, effective 1/4/13)

**WAC 296-800-23025 Provide convenient and clean washing facilities.**

**Exemption:** You do **not** have to provide washing facilities for:

- Mobile crews or work locations not normally attended by employees, if there is immediately available transportation to nearby washing facilities that meet the requirements of this rule.

You must(~~±~~  
\*) provide convenient and clean washing facilities for employees including:

- ((-) (1) Sinks or basins for personal washing.
- ((-) (2) Hot and cold water, or lukewarm (tepid), running water in each sink and basin.
- ((-) (3) Hand soap or similar cleaning agents.
- ((-) (4) One of the following:

- ((\*) (a) Individual paper or cloth hand towels.
- ((\*) (b) Individual sections of clean continuous cloth toweling.
- ((\*) (c) Air blowers for drying hands, located near the sinks and basins.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23040 Make sure eating areas are safe and healthy.** ~~((You must±))~~ (1) You must make sure employees are not allowed to eat and drink in:

- ((\*) (a) Bathrooms.
- ((\*) (b) Areas exposed to toxic substances.
- (2) You must make sure food is not stored in bathrooms or areas exposed to toxic substances.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23045 Follow these requirements if you provide food service to your employees.** ~~((You must±~~  
\*)) (1) You must make sure all food service facilities and operations you make available follow sound hygiene principles.

- ((\*) (2) You must make sure the food is:
- ((-) (a) Unspoiled.
- ((-) (b) Protected from contamination during processing, preparation, handling, and storage.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23050 Dispose of garbage and waste safely.** ~~((You must±))~~ (1) You must make sure garbage containers are:

- ((\*) (a) Kept in a clean and sanitary condition.
- ((\*) (b) Made from smooth, corrosion resistant materials.
- ((\*) (c) Easily cleaned or are disposable.
- ((\*) (d) Equipped with a solid tight-fitting cover unless you can keep them in a sanitary condition without a cover.
- (2) You must provide enough garbage containers to make sure they:
- ((\*) (a) Are conveniently located to encourage their use.
- ~~((-Went))~~ (b) Will not be overfilled.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23055 Remove garbage and waste in a way that does not create a health hazard.** You must(~~±~~  
\*) remove all sweepings, solid and liquid wastes, refuse, and garbage as often as needed to keep the workplace in a sanitary condition.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23060 Provide a separate lunchroom if employees are exposed to toxic substances if they are**

**allowed to eat and drink on the job site.** (~~You must~~) (1) You must provide a lunchroom separate from the work area if employees are exposed to toxic substances.

(2) You must use Table 2 to determine the required square footage in your lunchroom based on the number of employees using the room at any one time.

**Table 2**

**Maximum Number of Employees Using Lunchroom at One Time**

| Number of Persons | Square Feet per Person |
|-------------------|------------------------|
| 25 and less       | 13                     |
| 26-74             | 12                     |
| 75-149            | 11                     |
| 150 and over      | 10                     |

**Note:** You do not have to provide a separate lunchroom if it is convenient for employees to leave the workplace to eat and drink.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23065 Provide showers when required for employees working with chemicals.** (~~You must~~

•) (1) You must provide showers for employees if:

((-) (a) They work with chemicals that could cause an occupational illness; and

((~~AND~~

-) (b) The chemicals remain on the skin between work shifts.

((•) (2) You must make sure employees who work with such chemicals shower at the end of their shifts.

((-) (a) Make sure showers have:

((•) (i) Soap or other cleansing agents.

((•) (ii) Hot and cold water with a common discharge line.

((-) (b) Provide individual, clean towels for each employee who is required to shower.

((•) (c) Provide at least one shower for every ten employees (or every fraction of 10) of each gender.

**Note:** Table 3 shows the number of showers to provide based on a "fraction of 10."

**Table 3**

| Number of Employees of Each Gender | Number of Showers |
|------------------------------------|-------------------|
| 1-10                               | 1                 |
| 11-20                              | 2                 |
| 21-30                              | 3                 |
| 31-40                              | 4                 |
| 41-50                              | 5                 |

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23070 Provide change rooms when required.** (~~You must~~

•) (1) You must provide change rooms when employees are required by a particular standard to wear protective clothing because of the possibility of contamination with toxic materials.

((•) (2) You must make sure change rooms have separate storage facilities for street clothes and protective clothing.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-23075 Make sure any work clothes you provide are dry.** You must(~~:~~

•) make sure when providing work clothes to employees that the clothing provided is dry if the clothing:

((-) (1) Gets wet during use; or

((~~OR~~

-) (2) Is washed before it is reused.

AMENDATORY SECTION (Amending WSR 06-22-023, filed 10/24/06, effective 12/1/06)

**WAC 296-800-240 Summary.**

**Your responsibility:**

((~~TO~~) You must eliminate exposure to *environmental tobacco smoke* in your office work environment.

((~~You must:~~

~~Prohibit tobacco smoke in your office work environment WAC 296-800-24005-)~~

| <u>You must meet the requirements ...</u>                     | <u>in this section:</u>  |
|---|--------------------------|
| <u>Prohibit tobacco smoke in your office work environment</u> | <u>WAC 296-800-24005</u> |

**Note:** This rule does not preempt any federal, state, municipal, or other local authority's regulation of indoor smoking that is more protective than this section.

**Definition:** Office work environment is an indoor or enclosed occupied space where clerical work, administration, or business is carried out. In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.
- Office areas of manufacturing and production facilities, not including process areas.
- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

**Link:** For work environments outside the office, contact your local health department using the link <http://www.secondhandsmokesyou.com> or by calling them directly.

AMENDATORY SECTION (Amending WSR 06-22-023, filed 10/24/06, effective 12/1/06)

**WAC 296-800-24005 Prohibit tobacco smoke in your office work environment.** Exemption: The minimum criteria specified in this rule do not apply to outdoor structures provided for smokers such as gazebos or lean-tos that maintain the twenty-five feet distance from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

~~((You must:))~~

(1) You must prohibit *smoking* in your office work environment.

(2) You must use administrative controls to prevent tobacco smoke from entering your office from outside the building.

(~~(\*)~~) (3) You must make sure that outside smoking areas used by your employees are at least twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-250 Summary.**

**Your responsibility:**

To make sure stairs used by employees are safe,

~~((You must:~~

~~Provide fixed stairs where required~~

~~WAC 296-800-25005~~

~~Provide stairs that minimize hazards~~

~~WAC 296-800-25010~~

~~Provide handrails and stair railings~~

~~WAC 296-800-25015.))~~

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Provide fixed stairs where required</u>  | <u>WAC 296-800-25005</u> |
| <u>Provide stairs that minimize hazards</u> | <u>WAC 296-800-25010</u> |
| <u>Provide handrails and stair railings</u> | <u>WAC 296-800-25015</u> |

**Exemptions:**

This rule does **not** apply to:

- ◆ Stairs used exclusively for fire exit purposes
- ◆ Construction operations (See WAC 296-24-76503 for the specifications for the safe design and construction of fixed general industrial stairs.)
- ◆ Private buildings or residences
- ◆ Articulated stairs (for example, stairs used at a marina)
- ◆ Nonindustrial and monumental stairs are excluded as they are not industrial stairs; however, when public and private building steps are located at loading or receiving docks, in maintenance areas, etc., or are used exclusively by employees, the requirements of this rule must apply.

**Note:**

The introduction has important information about building, electrical and fire codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to building, fire, and electrical codes" in the introduction section of this book.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-25005 Provide fixed stairs where required.** (1) You must(~~(=~~

~~\*)~~) install fixed stairs where:

((~~(-~~) (a) Employees travel between different levels on a predictable and regular basis.

((~~(-~~) (b) Access to platforms is required to give routine attention to equipment under operation.

((~~(-~~) (c) Daily movement between elevations is required to gauge, inspect, and maintain equipment where those work assignments may expose employees to acids, caustics, gases, or other harmful substances.

((~~(-~~) (d) Carrying tools or equipment by hand is a normal work requirement.

((~~(\*)~~) (2) You must not use spiral stairways except as secondary exit routes.

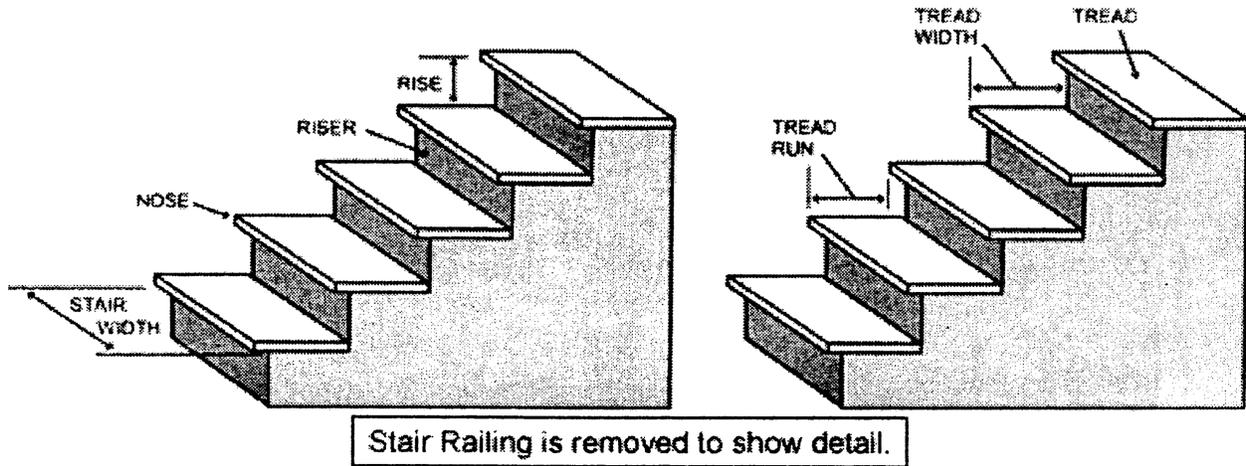
**Note:**

- You can use fixed ladders for climbing elevated structures, such as tanks, towers, and overhead traveling cranes, when their use is common practice in your industry.
- You can use winding stairways on tanks and similar round structures if the structure's diameter is at least five feet.
- You could use a spiral stairway as an exit route in a restricted area that lacks room for a conventional stairway.

**Definitions:**

- A stairway or fixed stairs is a series of steps and landings:
  - Leading from one level or floor to another.
  - Leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment.
  - Used more or less continuously or routinely by employees or only occasionally by specific individuals.
  - With three or more risers.
- A riser is the vertical part of the step at the back of a tread that rises to the front of the tread above.
- A tread is the horizontal part of the step. Tread width is the distance from the front of the tread to the back.

Stair Components



**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-25010 Provide stairs that minimize hazards.** ~~((You must:))~~ (1) You must make sure stairs have slip-resistant treads.

(2) You must make sure that stairs with four or more risers have:

((\*) (a) Railings on the open sides of all exposed stairways and stair platforms.

((\*) (b) Handrails on at least one side of closed stairways, preferably on the right side while descending.

(3) You must provide a platform where doors or gates open directly on a stairway. The swing of the door must not reduce the effective width of the platform to less than 20 inches.

**Note:** To see all of the rules for building fixed stairs, refer to WAC 296-24-75011 and 296-24-765 of the General safety and health standard.

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-25015 Provide handrails and stair railings.**

**Exemption:** Vehicle service pit stairways are exempt from the rules for stairway railing and guards, if they would prevent a vehicle from moving into a position over the pit.

**Definition:**

- A handrail is a single bar or pipe on brackets from a wall or partition to provide a continuous handhold for persons using a stair.
- A stair railing is a vertical barrier attached to a stairway with an open side, to prevent falls. The top surface of the stair railing is used as a handrail.

(1) You must(~~;~~ \*) make sure stairways less than forty-four inches wide have:

((-) (a) At least one handrail, preferably on your right side as you go down the stairs, if both sides are enclosed(~~;~~ OR

~~);~~ or (b) At least one stair railing on the open side, if one side is open(~~;~~ OR

~~);~~ or (c) One stair railing on each side, if both sides are open.

((\*) (2) You must make sure stairways more than forty-four inches wide but less than eighty-eight inches wide have:

((-) (a) One handrail on each enclosed side.

((-) (b) One stair railing on each open side.

((\*) (3) You must make sure stairways at least eighty-eight inches wide have:

((-) (a) One handrail on each enclosed side.

((-) (b) One stair railing on each open side.

((-) (c) One intermediate stair railing located approximately midway of the width.

((\*) (4) You must equip winding stairs with a handrail, offset to prevent walking on all portions of the treads, less than six inches wide.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-260 Summary.**  
**Your responsibility:**

To safely guard floor openings, floor holes, and open-sided floors in your workplace.

~~((You must: Guard or cover floor openings and floor holes. WAC 296-800-26005.~~

~~Protect open-sided floors and platforms. WAC 296-800-26010.))~~

|  |                          |
|--|--------------------------|
| <u>You must meet the requirements ...</u>            | <u>in this section:</u>  |
| <u>Guard or cover floor openings and floor holes</u> | <u>WAC 296-800-26005</u> |

|  |                          |
|--|--------------------------|
| <u>You must meet the requirements ...</u>      | <u>in this section:</u>  |
| <u>Protect open-sided floors and platforms</u> | <u>WAC 296-800-26010</u> |

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-26005 Guard or cover floor openings and floor holes.**

**Definition:** A **floor opening** is an opening in any floor, platform, pavement, or yard that measures at least twelve inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways
- Stair or ladder openings
- Pits
- Large manholes.

The following are **not** considered **floor openings**:

- Openings occupied by elevators
- Dumbwaiters
- Conveyors
- Machinery
- Containers

A **floor hole** is an opening in any floor, platform, pavement, or yard that measures at least one inch but less than twelve inches at its smallest dimension and through which materials and tools (but not people) can fall.

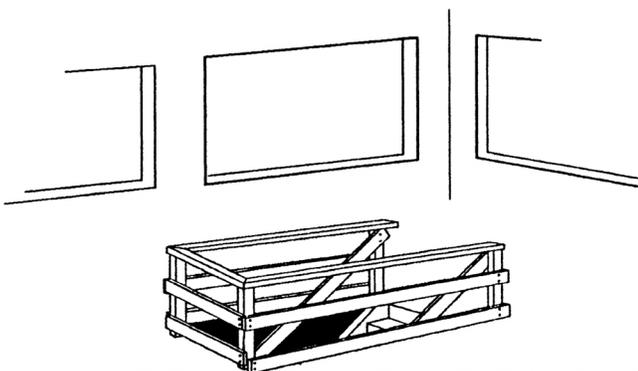
Examples of floor holes are:

- Belt holes
- Pipe openings
- Slot openings

~~((You must:))~~

(1) You must guard stairway floor openings, temporary floor openings and floor holes.

~~((★))~~ (a) Protect all stairway floor openings with a railing. The railing must protect all open sides except the stairway entrance side.



Guardrail installed around all sides of stairway opening except at the entrance.

~~((★))~~ (b) Use a hinged cover and a removable railing where traffic across an infrequently used stairway floor opening prevents the installation of a fixed railing. This removable railing must protect all open sides except the stairway entrance side.

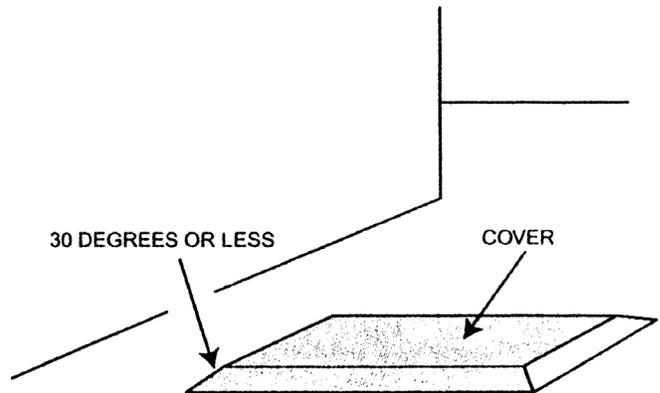
~~((★))~~ (c) Protect temporary floor openings by either a railing or by a person who constantly attends the opening.

~~((★))~~ (d) Protect exposed floor holes into which a person can accidentally walk by either:

~~((-))~~ (i) A railing with a toeboard on all open sides; or

~~((-))~~ (ii) A floor hole cover of standard strength and construction that can be hinged in place. When a floor hole cover is not in place, the hole must be protected by a removable railing or constantly attended by someone.

~~((★))~~ (e) Provide covers for floor openings. Floor opening covers may be of any material that has a safety factor of four, or is strong enough to hold up to four times the intended load. Covers that do not project more than one inch above the floor level may be used providing all edges are beveled (slanted) to prevent tripping. All hinges, handles, bolts, or other parts of a cover must set flush with the floor or cover surface.

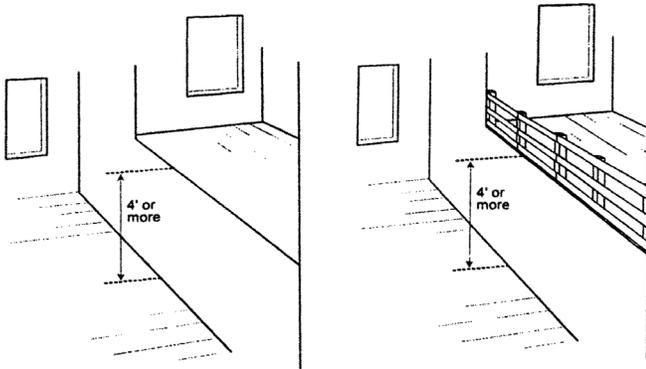


A cover that projects above the surface must be beveled to reduce the tripping hazard.

(2) You must prevent tools and materials from falling through a floor hole. The floor hole must be protected by a cover that leaves an opening no more than one inch wide and is securely held in place. This applies only to floor holes that persons cannot accidentally walk into on account of fixed machinery, equipment, or walls.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-26010 Protect open-sided floors and platforms.**



OPEN FLOOR (Unguarded)

GUARDED FLOOR

~~((You must:))~~

~~(1) You must guard open-sided floors and platforms.~~

~~(\*) (a) Guard open-sided floors and platforms four feet or more above adjacent floor or ground level by a railing. The entrance to a ramp, stairway, or fixed ladder does not need a railing.~~

~~(\*) (b) Guard open-sided floors, walkways and platforms above or adjacent to dangerous equipment, pickling or galvanizing tanks, degreasing units, and other similar hazards, regardless of height with a railing and toeboard.~~

~~(2) You must make sure tools and loose materials are not left on overhead platforms and scaffolds.~~

**Note:**

- Where the guarding rules above do not apply because employees exposure to falls is infrequent (not on a predictable and regular basis), you must comply with the Personal Protective Equipment (PPE) rules (WAC 296-800-160) or other effective fall protection must be provided.
- You can find the minimum requirements for standard railings of various types of construction in WAC 296-24-75011.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-270 Summary.**

**Your responsibility:**

To make sure that the buildings, floors, and other structures in your workplace are safe, well-built, and not overloaded.

~~((You must:~~

~~Not overload floors or roofs~~

~~WAC 296-800-27005.~~

~~Make sure that floors are safe~~

~~WAC 296-800-27010.~~

~~Make sure floors can support equipment that moves or has motion~~

~~WAC 296-800-27015.~~

~~Post approved load limits (weight limits) for floors~~

~~WAC 296-800-27020.))~~

| <u>You must meet the requirements ...</u>                               | <u>in this section:</u>  |
|---|--------------------------|
| <u>Do not overload floors or roofs</u>                                  | <u>WAC 296-800-27005</u> |
| <u>Make sure that floors are safe</u>                                   | <u>WAC 296-800-27010</u> |
| <u>Make sure floors can support equipment that moves and has motion</u> | <u>WAC 296-800-27015</u> |
| <u>Post approved load limits (weight limits) for floors</u>             | <u>WAC 296-800-27020</u> |

**Note:** The introduction has important information about fire, building and electrical codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to fire, building and electrical codes" in the introduction section of this book.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-27005 Do not overload floors or roofs.**

You must((:

•) prohibit overloading roofs and floors of any building or other structure with more weight than is approved by the building official.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-27010 Make sure that floors are safe.**

(1) You must((:

•) make sure that floors including their parts and structural members are safe.

((\*) (2) You must make sure floors are of substantial construction and kept in good repair. This includes floors of:

((-) (a) Buildings,

((-) (b) Platforms,

((-) (c) Walks and driveways,

((-) (d) Storage yards,

((-) (e) Docks,

((\*) (3) You must make sure that structures are designed, constructed, and maintained to provide a safety factor of 4 times the imposed maximum strain.

((-) (4) If you notice bowing, cracking, or other indications of excessive strain on a structure, you must take action to make sure it is safe.

**Note:** This rule applies to all buildings or those that have had complete or major changes or repairs built after 5/7/74.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-27015 Make sure floors can support equipment that moves or has motion.** You must((:

•) make sure flooring of buildings, ramps, docks, trestles and other fixed structures that supports equipment that moves or has motion such as vibration, must not be less than two and one-half inch material.

**Note:** Where flooring is covered by steel floor plates, 2-inch material may be used.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-27020 Post approved load limits (weight limits) for floors.** (1) You must(~~±~~ ~~•~~) post approved load limits (weight limits) for floors used for mercantile, business, industrial or storage purposes in an obvious place.

(~~•~~) (2) You must as the owner, or owner's agent, of a building (or other part of a workplace) post the load approved by the building official by:

(-)(a) Supplying and affixing a durable metal sign that is marked with the approved load.

(-)(b) Placing the metal sign in an obvious spot in the space to which it applies.

(-)(c) Replacing the metal sign if it is lost, defaced, damaged, or removed.

**Note:** This rule applies to the floor that supports shelving, but not to the shelves themselves.

AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-280 Basic electrical rules.**

**Summary.**

**Your responsibility:**

To protect your employees from hazards when working with electrical equipment, tools, and appliances.

~~((You must:~~

~~Inspect all electrical equipment your employees use to make sure the equipment is safe.~~

~~WAC 296-800-28005.~~

~~Make sure all electrical equipment is used for its approved or listed purpose.~~

~~WAC 296-800-28010.~~

~~Make sure electrical equipment used or located in wet or damp locations is designed for such use.~~

~~WAC 296-800-28015.~~

~~Make sure electrical equipment that is not marked by the manufacturer cannot be used.~~

~~WAC 296-800-28020.~~

~~Identify disconnecting means.~~

~~WAC 296-800-28022.~~

~~Maintain electrical fittings, boxes, cabinets, and outlets in good condition.~~

~~WAC 296-800-28025.~~

~~Maintain all flexible cords and cables in good condition and use safely.~~

~~WAC 296-800-28030.~~

~~Guard electrical equipment to prevent your employees from electrical hazards.~~

~~WAC 296-800-28035.~~

~~Make sure electrical equipment is effectively grounded.~~

~~WAC 296-800-28040.~~

~~Make sure electrical equipment has overcurrent protection.~~

~~WAC 296-800-28045.))~~

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Inspect all electrical equipment your employees use to make sure the equipment is safe</u>           | <u>WAC 296-800-28005</u> |
| <u>Make sure all electrical equipment is used for its approved or listed purpose</u>                    | <u>WAC 296-800-28010</u> |
| <u>Make sure electrical equipment used or located in wet or damp locations is designed for such use</u> | <u>WAC 296-800-28015</u> |
| <u>Make sure electrical equipment that is not marked is not used</u>                                    | <u>WAC 296-800-28020</u> |
| <u>Identify disconnecting means</u>   | <u>WAC 296-800-28022</u> |
| <u>Maintain electrical fittings, boxes, cabinets, and outlets in good condition</u>                     | <u>WAC 296-800-28025</u> |
| <u>Working space around electrical equipment</u>  | <u>WAC 296-800-28027</u> |
| <u>Maintain all flexible cords and cables in good condition and use safely</u>                          | <u>WAC 296-800-28030</u> |
| <u>Guard electrical equipment to prevent your employees from electrical hazards</u>                     | <u>WAC 296-800-28035</u> |
| <u>Make sure electrical equipment is effectively grounded</u>   | <u>WAC 296-800-28040</u> |
| <u>Make sure electrical equipment has overcurrent protection</u>  | <u>WAC 296-800-28045</u> |

**Exemptions:**

•These rules apply to all electrical equipment used in the workplace, except for:

- Electrical installations and equipment on ships, watercraft, railway rolling stock, aircraft and all automotive vehicles other than mobile homes and recreational vehicles.

- Electrical installations and equipment used to generate, transmit, transform or distribute power exclusively for operation of rolling stock.

- Electrical installations of railways used exclusively for signaling and communication purposes.

- Installations underground in mines.

- Installations of communication equipment under the exclusive control of communications utilities, located outdoors or in building spaces used exclusively for such installations.

- Installations controlled and used exclusively by electric utilities for:

- Communication or metering purposes; or

- Generating, controlling, transforming, transmitting and distributing electric energy that are located:
  - ◆ In buildings used exclusively by the utility for such purposes; or
  - ◆ Outdoors on property owned or leased by the utility; or
  - ◆ On public highways, streets and roads; or
  - ◆ Outdoors by established rights on private property.

**Note:**

- The introduction has important information about fire, building and electrical codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to fire, building and electrical codes" in the introduction section of this book.
- These rules guide how electrical equipment is used and maintained in your workplace. They should not be used in place of your local electrical codes if you are installing electrical wiring, electrical circuits or electrical distribution equipment.
- This rule applies to 600 volts or less. Requirements for specific equipment or special installation are found in chapter 296-24 WAC, Part L.

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28005 Inspect all electrical equipment your employees use to make sure the equipment is safe.**  
You must((=

•)) inspect electrical equipment to make sure there are no recognized hazards likely to cause death or serious physical harm to employees. Determine the safety of the equipment by considering the following:

Suitability for installation and use as evidenced by:

((-) (1) Approved or listed by a recognized testing laboratory, such as Underwriters Laboratories (UL) or other approving agency.

((-) (2) Labeled or listed for the purpose it is being used.

((-) (3) Mechanical strength and durability, including the adequacy of the protection provided by parts designed to enclose and protect other equipment.

((-) (4) Wire-bending and connection space.

((-) (5) Electrical insulation.

((-) (6) Heating effects under all conditions of use.

((-) (7) Arcing effects.

((-) (8) Classification by type, size, voltage, current capacity, and specific use.

((-) (9) Other factors that contribute to the practical safeguarding of persons using or likely to come in contact with the equipment.

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28010 Make sure all electrical equipment is used for its approved or listed purpose.**

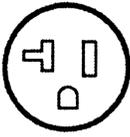
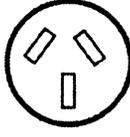
- Definitions:**
- Electrical outlets are places on an electric circuit where power is supplied to equipment through receptacles, sockets and outlets for attachment plugs.
  - Receptacles are outlets that accept a plug to supply electric power to equipment through a cord or cable.

(1) You must((= •)) make sure electrical outlets have an ampere rating that is not less than the electrical load to be served.

((\*) (2) You must make sure the proper mating configuration exists when connecting the attachment plug to a receptacle.

((\*) (3) You must make sure electrical outlets, cord connectors, attachment plugs and receptacles will not accept an attachment plug with a different voltage or current rating than that for which the device is intended.

**Note:** A 20-ampere T-slot receptacle or cord connector may accept a 15-ampere attachment plug of the same voltage rating.

| SOME COMMON ELECTRICAL OUTLET (RECEPTACLE) CONFIGURATIONS   |   |   |  |   |
|---|---|---|--|---|
|   | 15 Ampere   | 20 Ampere   | 30 Ampere  | 50 Ampere   |
| <b>Two Pole<br/>3 - Wire<br/>Grounding<br/>125 Volt</b>   |  |  |  |  |
| <b>Three Pole<br/>3 - Wire<br/>125/250 Volt</b>   |   |  |  |  |
| <b>Note:</b> A 20-ampere "T-slot" outlet or cord connector may accept a 15-ampere attachment plug of the same voltage rating. |   |   |  |   |

AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28015 Make sure electrical equipment used or located in wet or damp locations is designed for such use.** (1) You must:

•) make sure fixtures and receptacles located in wet or damp locations are approved for such use. They must be constructed or installed so that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

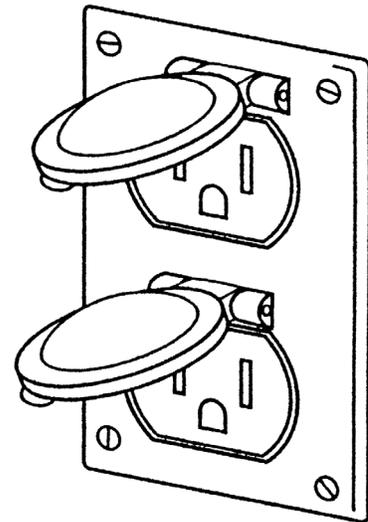
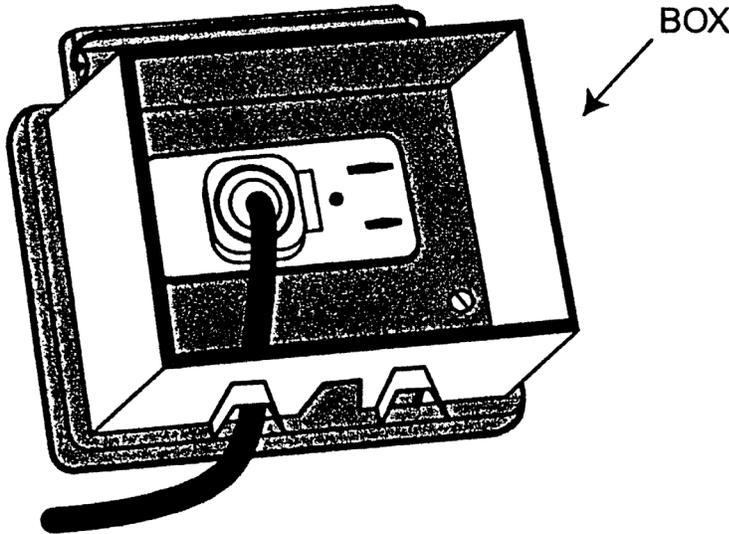
((\*) (2) You must make sure cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations are:

((-) (a) Installed to prevent moisture or water from entering and accumulating inside.

((-) (b) Mounted so there is at least a 1/4 inch airspace between the enclosure and the wall or other supporting surface. Nonmetallic enclosures may be installed on a concrete, masonry, tile, or similar surface without the airspace.

((-) (c) Weatherproof when used in wet locations.

Switches, circuit breakers, and switchboards located in wet locations must be in weatherproof enclosures.



Electrical equipment used in wet locations must be weatherproof.

AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28020 Make sure electrical equipment that is not marked is not used.** (You must:

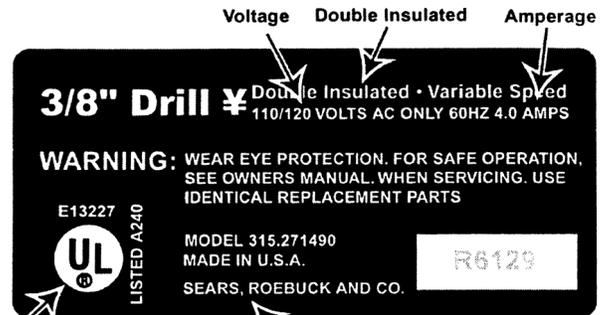
•) (1) Electric equipment may not be used unless the following markings have been placed on the equipment:

((-) (a) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified; and

((AND

-) (b) Voltage, current and wattage, or other ratings as necessary.

((\*) (2) You must make sure markings are durable and appropriate to the environment.



Testing Organization Approval

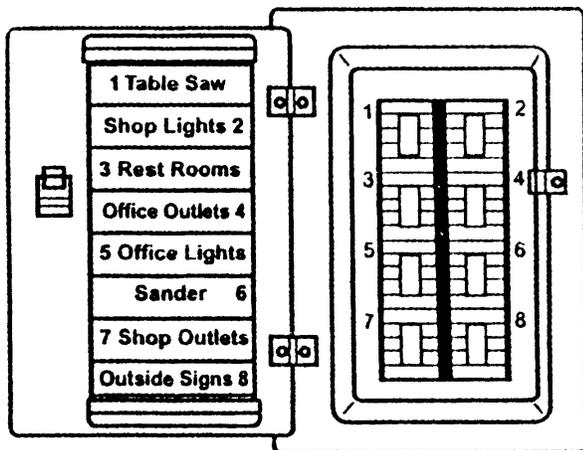
Manufacturer

Electrical tools and equipment marked to show manufacturer, approvals and power requirements.

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28022 Identify disconnecting means.**

- (1) You must(☺)
  - ☛) make sure the disconnecting means (such as on/off switches and circuit breakers) is marked to show when it is open and closed and what equipment it controls, unless located and arranged so the purpose is obvious.
  - (☛) (2) You must install the disconnecting means at a readily accessible location nearest the point of entrance of the service-entrance conductors.
  - (☛) (3) You must make sure the disconnecting means for each motor and appliance is marked, at the disconnecting means or overcurrent device, to show when the circuit is open and closed and what circuit it controls, unless located and arranged so the purpose is obvious.
  - (☛) (4) You must make sure each service, feeder and branch circuit is marked, at its disconnecting means or overcurrent device, to show when the circuit is open and closed and what circuit it controls, unless located and arranged so the purpose is obvious.
  - (☛) (5) You must make sure markings are durable and appropriate to the environment.



**Electrical panel circuit breakers labeled to show the equipment or circuits they control.**

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28025 Maintain electrical fittings, boxes, cabinets and outlets in good condition.** You must(☺) do the following when using covers and openings:

- (☛) (1) When conductors enter boxes, cabinets, or fittings:
  - (-) (a) Protect the conductor (wires) from abrasion.
  - (-) (b) Effectively close the openings where conductors enter.
  - (-) (c) Effectively close all unused openings.
- (☛) (2) Provide pull boxes, junction boxes, and fittings with covers approved for the purpose.

(☛) (3) Make sure each outlet box has a cover, faceplate, or fixture canopy in completed installations.

(☛) (4) Make sure covers for outlet boxes with openings for flexible cord pendants have bushings to protect the cord, or have a smooth and well rounded surface where the cord touches the opening.

(☛) (5) Ground metal covers.

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28027 Working space around electrical equipment.** This section applies to equipment that operates at least 100 volts or less.

(1) You must provide and maintain sufficient access and working space around all electrical equipment to permit ready and safe operation and maintenance of the equipment.

(2) You must make sure equipment likely to require examination, adjustment, servicing, or maintenance while energized has:

(☛) (a) Working space in front of the equipment that is equal to the width of the equipment or thirty inches, whichever is greater.

(☛) (b) Sufficient working space to permit equipment doors or hinged panels to open at least 90 degrees.

(☛) (c) Working space in the direction of access to live parts that is not less than that listed in Table XX. Distances are measured from the live parts if they are exposed or from the enclosure front or opening if they are enclosed.

(☛) (d) Clear working space about service equipment, switchboards, panelboards, or motor control centers that extends from the grade, floor, or platform to a height of:

(-) (i) 6.25 Feet for installations built before August 13, 2007.

(-) (ii) 6.5 Feet for installations built on or after August 13, 2007. If the height of the equipment is greater than 6.5 feet, the minimum headroom may not be less than the height of the equipment.

**Note:** • Other equipment associated with the electrical installation and located above or below the electric equipment may extend not more than 6 inches beyond the front of the electric equipment.

(3) You must make sure working space is:

(☛) (a) Not used for storage.

(☛) (b) Suitably guarded when normally enclosed live parts are exposed for inspection or servicing in a passageway or general open space.

(4) You must provide at least one entrance of sufficient area to give access to the working space about electric equipment.

(5) You must provide adequate lighting (WAC 296-800-210) for all working spaces about service equipment, switchboards, panelboards, and motor control centers installed indoors. In electric equipment rooms, the illumination must not be controlled by automatic means only.

(☛) This table shows the area you must keep clear depending on the layout of the electrical equipment.

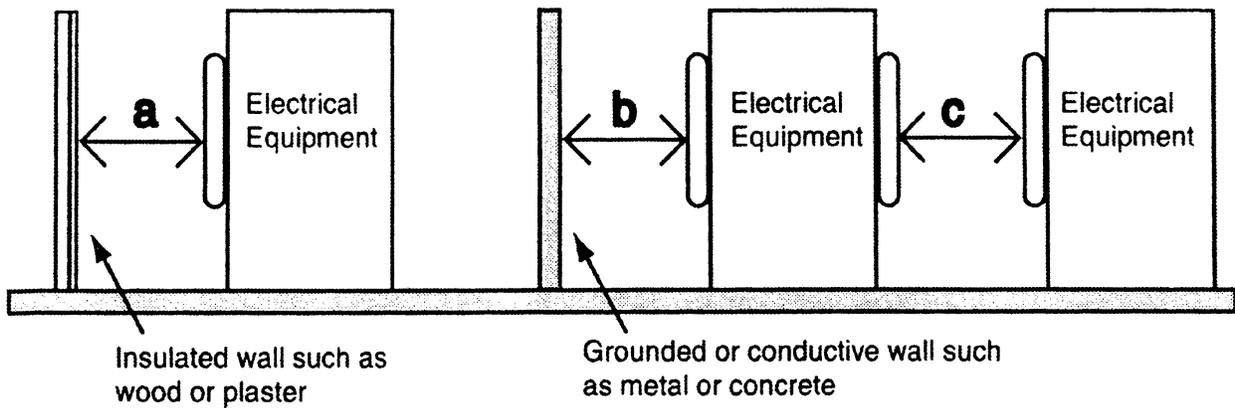
Table XX

| Conditions <sup>2</sup> | Minimum Clear Distance <sup>3</sup> | Minimum Clear Distance <sup>3</sup> |
|-------------------------|-------------------------------------|-------------------------------------|
|                         | 0 - 150 volts to ground             | 151 - 600 volts to ground           |
| A <sup>1</sup>          | 3 ft.                               | 3 ft.                               |
| B                       | 3 ft. <sup>1</sup>                  | 3 1/2 ft.                           |
| C                       | 3 ft.                               | 4 ft.                               |

- Minimum clear distances may be 0.7 m (2.5 ft) for installations built before April 16, 1981.
- Conditions A, B, and C are as follows:  
 A = Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated bus bars operating at not over 300 volts aren't considered live parts.

B = Exposed live parts on one side and grounded parts on the other side.  
 C = Exposed live parts on both sides of the workspace (not guarded as provided in condition A with the operator between the panels).

- Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on deenergized parts on the back of enclosed equipment, a minimum working space of 30 in. horizontally ((shall)) must be provided.



Distances are measured from live parts if they are exposed or from the enclosure front if live parts are enclosed.

AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28030 Maintain all flexible cords and cables in good condition and use safely.**

**Exemption:** These rules do not apply to cords and cables that are an internal part of factory assembled appliances and equipment, like the windings on motors or wiring inside electrical panels.

**Note:** Flexible cords and cables are typically used to connect electrical equipment to a power source. These cords can have an electrical plug to connect to a power source or can be permanently wired into the power source. The terms flexible cords, extension cord, cables and electrical cords all refer to a type of flexible cord.

~~((You must:))~~

(1) You must perform visual inspections.

~~((+))~~ On portable cord- and plug-connected equipment and extension cords before use on each work shift. Defects and damage to look for include:

- ~~((-))~~ (a) Loose parts.
- ~~((-))~~ (b) Deformed or missing pins.
- ~~((-))~~ (c) External defects and damage.
- ~~((-))~~ (d) Damage to the outer covering or insulation.
- ~~((-))~~ (e) Pinched or crushed covering or insulation that might indicate internal damage.

**Exemption:** You do not need to visually inspect portable cord- and plug-connected equipment and extension cords that stay connected once in place and are not exposed to damage until they are moved.

~~((2))~~ You must~~((+))~~ remove from service any defective or damaged cord until repaired and tested.

~~((2))~~ (3) You must use~~((-))~~ flexible cords only as follows:

- ~~((-))~~ (a) Wiring of equipment and appliances.
- ~~((-))~~ (b) Data processing cables approved as a part of the data processing system.
- ~~((-))~~ (c) Pendants.

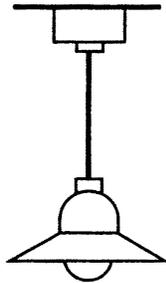
- ((-) (d) Wiring for fixtures.
- ((-) (e) Connecting portable lamps or appliances to an approved outlet with an attachment plug.
- ((-) (f) Connecting stationary equipment that is frequently changed with an attachment plug energized from an approved outlet.
- ((-) (g) Preventing noise or vibration transmission.

- ((-) (h) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair if the appliance is equipped with an attachment plug energized from an approved outlet.
- ((-) (i) Elevator cables.
- ((-) (j) Wiring of cranes and hoists.
- ((-) (k) Portable and mobile signs.
- ((-) (l) Connection of moving parts.

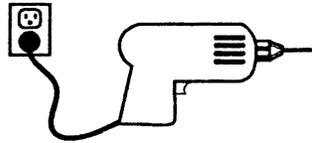
**Common Acceptable Uses of Flexible Cords**



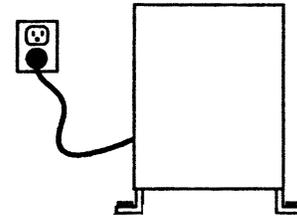
**Extension Cord**



**Pendant Cord Lamp or Control**



**Portable Appliances Tools and Lamps**



**Fixed or Stationary Equipment For Easy Maintenance or Replacement**

**Note:** Extension cords (flexible cord sets) may be used on a temporary basis if you follow the rules described in the temporary use section, WAC 296-800-28030(3).

- (4) You must:
  - (\*) make sure flexible cords are ~~(NOT)~~ not:
    - ((-) (a) Used as a substitute for fixed wiring of a structure.
    - ((-) (b) Run through holes in walls, ceilings, or floors.
    - ((-) (c) Run through doorways, windows, or similar openings.
    - ((-) (d) Attached to building surfaces.
    - ((-) (e) Concealed behind building walls, ceilings, or floors.
    - ((-) (f) Used to raise or lower equipment.
  - (\*) (5) You must make sure flexible cords and cables are approved and suitable for:
    - ((-) (a) The way they will be used.
    - ((-) (b) The location where they will be used.
  - (~~(\*)~~) (6) You must not fasten or hang cords and equipment in any way that could cause damage to the outer jacket or insulation of the cord.
  - (\*) (7) You must make sure insulation on flexible cords and cables is intact.
  - (\*) (8) You must make sure flexible cords and electrical cords are:
    - ((-) (a) Connected to devices and fittings so that any pulling force on the cord is prevented from being directly transmitted to joints or terminal screws on the plug.
    - ((-) (b) Used only in continuous lengths without splice or tap.

**Note:** Hard service flexible cords No. 12 or larger may be repaired or spliced if the insulation, outer sheath properties, and use characteristics of the cord are retained.

- (\*) (9) You must prohibit your employees from using wet hands to plug or unplug equipment or extension cords if the equipment is energized.
- (~~(\*)~~) (10) You must provide the following for temporary use.
  - (\*) (a) Make sure temporary electrical power and lighting installations that operate at 600 volts or less are used only:
    - ((-) (i) During and for remodeling, maintenance, repair or demolition of buildings, structures, or equipment, and similar activities.
    - ((-) (ii) For experimental or developmental work.
    - ((-) (iii) During emergencies.
    - ((-) (iv) For no more than ninety days for:
      - (\*) (A) Christmas decorative lighting.
      - (\*) (B) Carnivals.
      - (\*) (C) Other similar purposes.
  - (\*) (b) Make sure flexible cords and cables are protected from accidental damage as might be caused, for example, by sharp corners, projections, and doorways or other pinch points.
  - (\*) (c) Remove temporary wiring immediately upon completion of the project or purpose for which the wiring was installed.

**AMENDATORY SECTION** (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28035 Guard electrical equipment to prevent your employees from electrical hazards.** (~~(You must)~~) (1) You must guard live parts of electric equipment operating at 50 volts or more against accidental contact by any of the following means:

- (\*) (a) By approved cabinets or other forms of approved enclosures.

((\*) (b) By location in a room, vault, or similar enclosure that is accessible only to employees qualified to work on the equipment. Entrances to rooms and other guarded locations containing exposed live parts must be marked with conspicuous warning signs forbidding unqualified persons to enter.

((\*) (c) By permanent, substantial partitions or screens so that only employees qualified to work on the equipment will have access within reach of the live parts. Any openings must prevent accidental contact with live parts by employees or objects employees carry.

((\*) (d) By location on a balcony, gallery, or platform that will exclude unqualified persons.

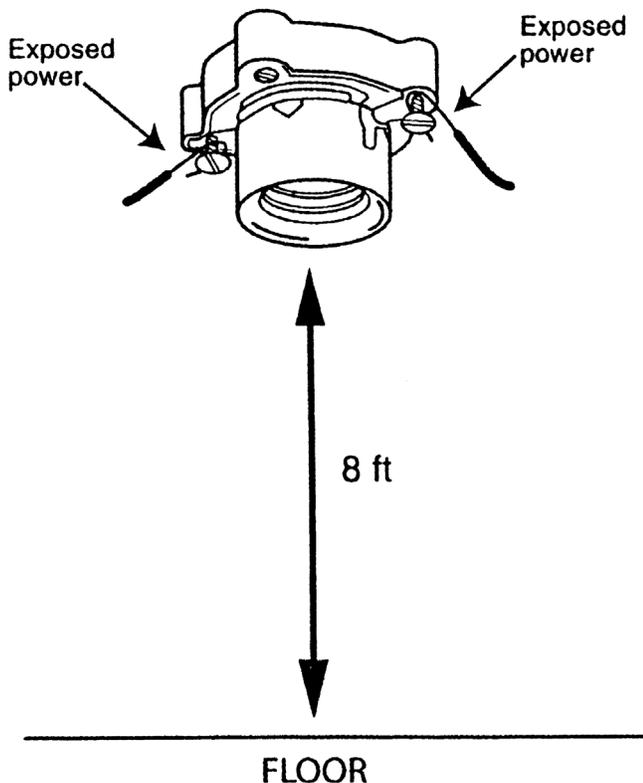
((\*) (e) By being located eight feet or more above the floor or other working surface.

(2) You must make sure all electrical appliances, fixtures, lampholders, lamps, rosettes, and receptacles do not have live parts normally exposed to employee contact.

((-) Rosettes and cleat type lampholders at least 8 feet above the ground may have exposed parts.

(3) In locations where electric equipment would be exposed to physical damage, enclosures or guards must be so arranged and of such strength as to prevent such damage.

**Live Parts Guarded by Distance**



(4) You must mark entrances to rooms and other guarded locations containing exposed live parts with conspicuous warning signs forbidding unqualified persons to enter.

AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28040 Make sure electrical equipment is effectively grounded. (1) You must((:**

\*) make sure the path to ground from circuits, equipment, and enclosures is permanent, continuous, and effective.

((\*) (2) You must make sure exposed noncurrent-carrying metal parts of cord- and plug-connected equipment that may become energized are grounded under any of the following conditions:

((-) (a) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated appliances if the appliance frames are permanently and effectively insulated from ground.

((-) (b) Equipment in hazardous locations. (WAC 296-24-95613)

((-) (c) If the equipment is of the following types:

((-) (i) Hand-held motor-operated tools.

((-) (ii) Stationary and fixed motor-operated tools.

((-) (iii) Light industrial motor-operated tools.

((-) (iv) Refrigerators.

((-) (v) Freezers.

((-) (vi) Air conditioners.

((-) (vii) Clothes washers and dryers.

((-) (viii) Dishwashers.

((-) (ix) Electrical aquarium equipment.

((-) (x) Sump pumps.

((-) (xi) Hedge clippers.

((-) (xii) Electric lawn mowers.

((-) (xiii) Electric snow blowers.

((-) (xiv) Wet scrubbers.

((-) (xv) Tools likely to be used in damp or wet locations.

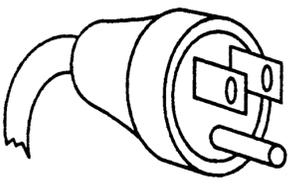
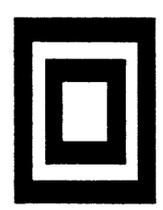
((-) (xvi) Appliances used by employees standing on the ground, on metal floors or working inside of metal tanks or boilers.

((-) (xvii) Portable hand lamps.

((-) (xviii) Portable and mobile X-ray and associated equipment.

((-) (xix) Tools likely to be used in wet and conductive locations.

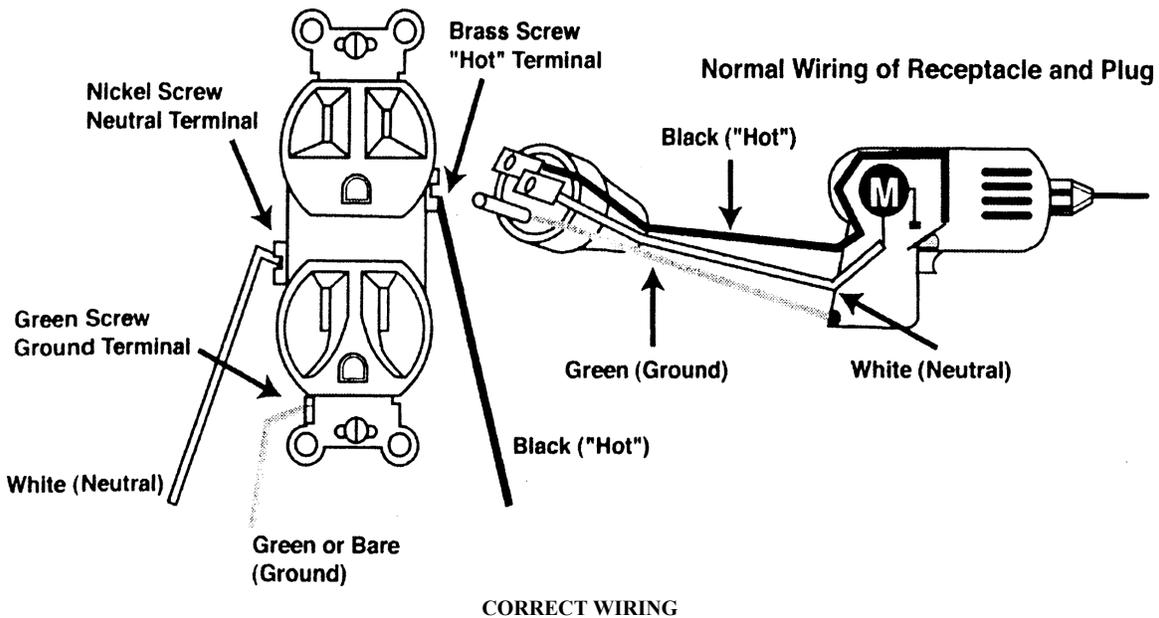
**Note:** Grounding can be achieved by using tools and appliances equipped with an equipment grounding conductor (three-prong plug and grounded electrical system).

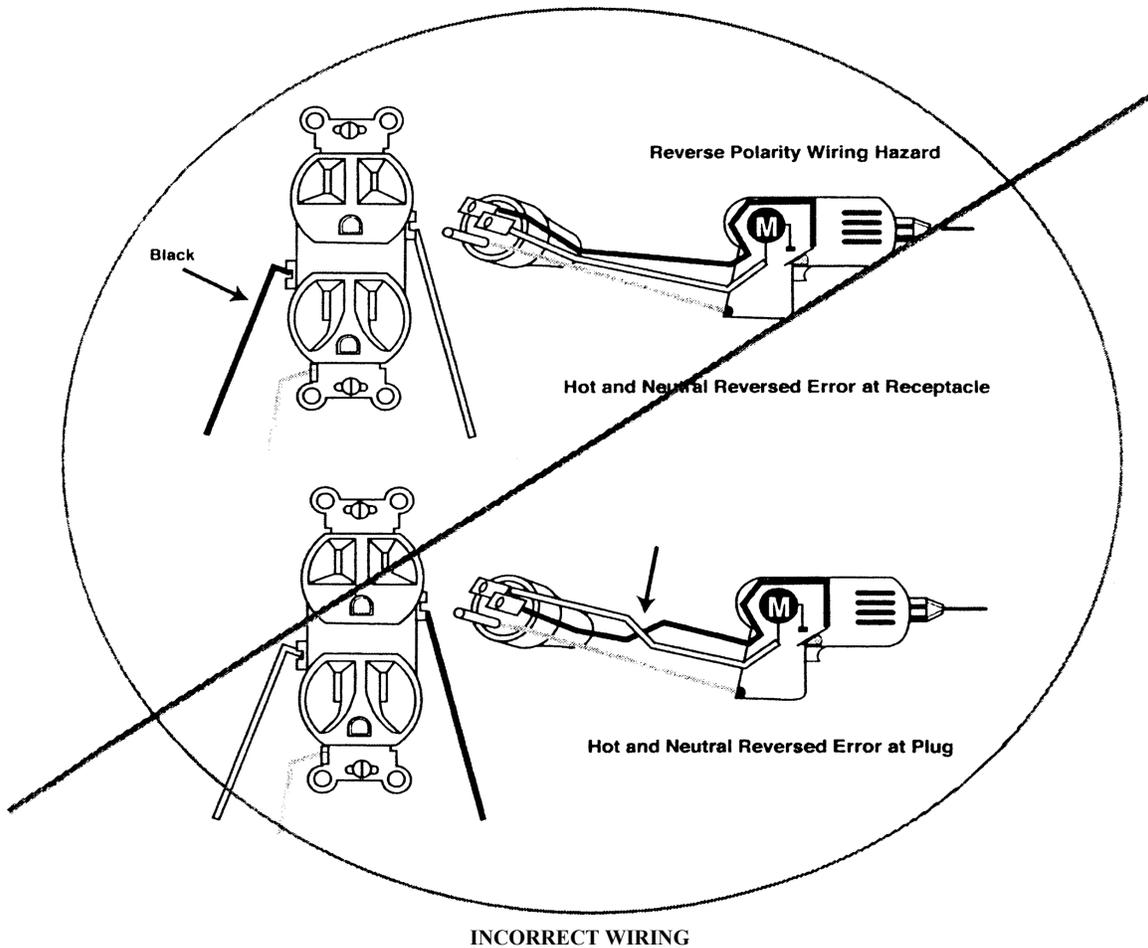
| Grounded Plug   | Double Insulated   |
|---|--|
|    | <div style="font-size: 2em; font-weight: bold;">Double Insulated</div>  |
| <p>Hand held tools and some other types of equipment must use a 3-wire plug or the tool label must show the tool as insulated by words or symbol.</p> |  |

- (3) You must(=
- ) make sure exposed metal parts of fixed equipment that do not conduct electricity, but may become energized, are grounded under any of the following conditions:
    - (-) (a) If the equipment is in a wet or damp location and is not isolated.
    - (-) (b) If within 8 feet vertically or 5 feet horizontally of ground or grounded metal objects and subject to employee contact.
    - (-) (c) If in electrical contact with metal.
    - (-) (d) If in a hazardous (classified) location.
    - (-) (e) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method.
    - (-) (f) If equipment operates with any terminal at over 150 volts to ground.

- (\*) (4) You must make sure a conductor used as a grounded conductor is identifiable and distinguishable from all other conductors.
- (\*) (5) You must make sure a conductor used as an equipment grounding conductor is identifiable and distinguishable from all other conductors.
- (\*) (6) You must make sure grounded conductors are not attached to any terminal or lead so as to reverse polarity of the electrical outlet or receptacle. See illustration - Examples of wiring.
- (\*) (7) You must make sure grounding terminals or grounding-type devices on receptacles, cords, connectors, or attachments plugs are not used for purposes other than grounding.

**Examples of Wiring**





AMENDATORY SECTION (Amending WSR 12-16-064, filed 7/31/12, effective 9/1/12)

**WAC 296-800-28045 Make sure electrical equipment has overcurrent protection.** (1) You must

(\*) (2) You must protect conductors and equipment from overcurrent according to their ability to safely conduct electrical current.

(\*) (3) You must make sure overcurrent devices do not interrupt the continuity of grounded conductors unless all conductors are opened at the same time, except for motor running overload protection.

(-) (a) Locate or shield fuses and circuit breakers so that employees will not be burned or otherwise injured by their operation.

(-) (b) Make sure handles or levers of circuit breakers, and similar parts that may move suddenly in such a way that persons in the vicinity are likely to be injured by being struck by them, are guarded or isolated.

(\*) (4) You must make sure the following fuses and thermo cutouts have disconnecting means:

(-) (a) All cartridge fuses accessible to nonqualified persons.

(-) (b) All fuses in circuits over 150 volts to ground.

(-) (c) All thermal cutouts on circuits over 150 volts to ground.

(\*) (5) The disconnecting means must be installed so you can disconnect the fuses or thermal cutouts without disrupting service to equipment and circuits unrelated to those protected by the overcurrent device.

(\*) (6) You must provide easy access to overcurrent devices for each employee or authorized building management personnel.

(\*) (7) You must locate overcurrent devices:

(-) (a) Away from easily ignitable material.

(-) (b) Where they are not exposed to physical damage.

(\*) (8) You must make sure circuit breakers clearly indicate whether they are open (off) or closed (on).

(\*) (9) You must install circuit breakers that operate vertically so the handle is in the "up" position when the breaker is closed (on).

(-) Circuit breakers used as switches in 120-volt, fluorescent lighting circuits must be approved for that purpose and marked "SWD."

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-300 Summary—Portable fire extinguishers.**

**Important:**

The following WISHA rule applies to the placement, use, maintenance, and testing of portable fire extinguishers provided for the use of employees. Your local fire marshal also enforces fire codes which address fire safety that are more comprehensive and may go beyond WISHA rules.

**Your responsibility:**

To provide readily accessible, appropriate portable fire extinguishers for employees in your workplace,

~~((You must:~~

~~Provide portable fire extinguishers in your workplace  
WAC 296-800-30005~~

~~Select and distribute portable fire extinguishers in your workplace~~

~~WAC 296-800-30010~~

~~Make sure that portable fire extinguishers are kept fully charged, in good operating condition, and left in their designated places~~

~~WAC 296-800-30015~~

~~Inspect and test all portable fire extinguishers~~

~~WAC 296-800-30020~~

~~Train your employees to use portable fire extinguishers~~

~~WAC 296-800-30025))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Provide portable fire extinguishers in your workplace</u>   | <u>WAC 296-800-30005</u> |
| <u>Select and distribute portable fire extinguishers in your workplace</u>   | <u>WAC 296-800-30010</u> |
| <u>Make sure that portable fire extinguishers are kept fully charged, in operable condition, and left in their designated places</u> | <u>WAC 296-800-30015</u> |
| <u>Inspect and test all portable fire extinguishers</u>  | <u>WAC 296-800-30020</u> |
| <u>Train your employees to use portable fire extinguishers</u>   | <u>WAC 296-800-30025</u> |

Exemptions:

- You are exempt from the requirements of portable fire extinguishers if you have the following:
  - A written fire safety policy that requires the immediate and total evacuation of employees from the workplace when there is a fire alarm signal(~~;~~ ~~AND~~); and
  - An emergency action plan and a fire prevention plan which meet the requirements of WAC 296-24-567; and ~~((AND))~~
  - Portable fire extinguishers in your workplace that are not accessible for employee use

- If another WISHA rule requires portable fire extinguishers, then you must comply with these requirements.

- Where extinguishers are provided but are not intended for employee use and you have an emergency action plan and a fire prevention plan (which meet the requirements of WAC 296-24-567), then only the requirements of WAC 296-800-30020 apply.

**Note:** The introduction has important information about building, electrical and fire codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to building, fire and electrical codes" in the introduction section of this book.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-30005 Provide portable fire extinguishers in your workplace.** ~~((You must:))~~ (1) You must provide approved portable fire extinguishers for your workplace and distribute them so they are readily accessible.

(~~(\*)~~) Make sure that your portable fire extinguisher does not use extinguishing agents such as carbon tetrachloride or chlorobromomethane extinguishing agents. In addition, soda-acid foam, loaded stream, antifreeze and water extinguishers of the inverting type (~~(shah))~~ must not be recharged or placed into service.

(2) You must mount, locate, and identify portable fire extinguishers so employees can easily reach them, without being subjected to possible injury.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-30010 Select and distribute portable fire extinguishers in your workplace.** Exemption:

- This does not apply to the portable fire extinguishers provided for employees to use outside of workplace buildings or structures.

- You are exempt from the distribution requirements of this rule if you have an emergency action plan (that meets requirements of WAC 296-24-567):

- Which designates certain employees to be the only employees authorized to use the available portable fire extinguishers; and

- Requires all other employees in the fire area to immediately evacuate the affected work area upon the sounding of the fire alarm.

You must(~~;~~

- ) provide the correct type of portable fire extinguishers and distribute them in your workplace, depending on the type, size, and severity of fire that could occur.

(~~(-)~~) The type of portable fire extinguishers you must have in your workplace depends on the types of fire hazards that exist in your workplace.

**Fire Extinguisher Distance Table**

| Type of fire hazard extinguisher  | Maximum distance from the fire hazard to a fire extinguisher  |
|---|---|
| Type of fire hazard<br>Wood, cloth, paper, rubber (Class A fire hazards)  | No more than 75 feet (22.9 m)<br>Note: You may use uniformly spaced standpipe systems or hose stations instead of Class A portable fire extinguishers, if they meet the requirements of WAC 296-24-602 or 296-24-607.   |
| Liquids, grease, gases (Class B fire hazards)   | No more than 50 feet (15.2 m)<br>Note: You may choose to use a smaller fire extinguisher in lieu of that required for the 50 foot distance. If you choose to have the smaller fire extinguisher, the travel distance must not be greater than 30 feet. See UFC Standard 10 Chapter 3 for the basic minimum extinguisher rating allowed. |
| Live electrical equipment and circuits (Class C fire hazards)   | Distribute any Class C portable fire extinguishers the same pattern that you have for any Class A or Class B fire hazards. Note: If the electrical equipment is deenergized, you may use a Class A or Class B portable fire extinguisher.   |
| Powder, flakes, and residue from combustible metals, like magnesium and titanium, that build up over a 2-week period (Class D fire hazards) | No more than 75 feet (22.9 m)   |

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-30015 Make sure that portable fire extinguishers are kept fully charged, in operable condition, and left in their designated places.** You must((=

\*) make sure that fire extinguishers found with deficiencies are removed from service and replaced with a suitable fire extinguisher.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-30020 Inspect and test all portable fire extinguishers.** (1) You must((=

\*) perform inspections:

((-) Make sure that portable fire extinguishers or hose systems (used instead of fire extinguishers) are visually inspected monthly.

((\*) (2) You must perform maintenance checks:

((-) (a) Make sure that all portable fire extinguishers are subjected to an annual maintenance check.

((-) (b) Keep records of all annual maintenance checks and make available to the department upon request.

((\*) (i) For 1 year after the last maintenance check; or  
((OR

\*) (ii) For the life of the shell, whichever is less.

((-) (c) Make sure that equal protection is provided when portable fire extinguishers are removed from service for maintenance and recharging

Exemption: Most stored pressure extinguishers do not require an internal examination. Examples of those that do require an internal examination are those containing a loaded stream agent.

(3) You must((=

\*) perform hydrostatic testing:

Exemption:

• Dry chemical extinguishers that have nonrefillable disposable containers are exempt from this requirement.

• Manually pressurized pumptanks are exempt from this requirement.

(4) You must((=

\*) make sure that portable extinguishers are hydrostatically tested:

((-) (a) At the intervals listed in Table 1, of this section.

((-) (b) Whenever they show evidence of corrosion or mechanical injury.

((\*) (5) You must not perform hydrostatic testing on fire extinguishers if:

((-) (a) The unit has been repaired by soldering, welding, brazing, or use of patching compounds.

((-) (b) The cylinder or shell threads are damaged.

((-) (c) Corrosion has caused pitting, including corrosion under removable name plate assemblies.

((-) (d) The extinguisher has been burned in a fire.

((-) (e) Calcium chloride extinguishing agents have been used in a stainless steel shell.

**Note:** Specific rules regarding conducting hydrostatic tests are covered in WAC 296-24-59212.

(6) You must((=

\*) maintain records showing that hydrostatic testing has been performed. Provide the following evidence to the department upon request:

((-) (a) Date of test.

((-) (b) Test pressure used.

((-) (c) The serial number, or other identifier of the fire extinguisher that was tested.

((-) (d) Person or agency performing the test.

((\*) (7) You must keep records until:

((-) (a) The extinguisher is retested; or

((OR

-) (b) The extinguisher is taken out of service, whichever comes first.

((\*) (8) You must empty and maintain stored-pressure dry chemical extinguishers requiring a 12-year hydrostatic test, every six years:

((-) When recharging or hydrostatic testing is performed, the 6-year requirement begins from that date

**Hydrostatic Test Table**

| Type of Extinguisher  | Test Interval (Years) |
|---|-----------------------|
| Stored pressure water and/or antifreeze   | 5                     |
| Wetting agent   | 5                     |
| Foam (stainless steel shell)  | 5                     |
| Aqueous film forming form (AFFF)  | 5                     |
| Loaded stream   | 5                     |
| Dry chemical with stainless steel   | 5                     |
| Carbon dioxide  | 5                     |
| Dry chemical, stored pressure, with mild steel, brazed brass or aluminum shells | 12                    |
| Halon 1211  | 12                    |
| Halon 1301  | 12                    |
| Dry powder, cartridge or cylinder operated, with mild steel shell               | 12                    |

Note: Due to a manufacturer's recall, stored pressure water extinguishers with fiberglass shell (pre-1976) are prohibited from hydrostatic testing.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-30025 Train your employees to use portable fire extinguishers.** (1) You must((:

\*) train your employees where you have provided portable fire extinguisher for their use in:

((-) (a) The hazards involved with incipient stage fire-fighting (the early stage of a fire when it can be extinguished by a portable fire extinguisher).

((-) (b) The general principles of fire extinguisher use.

((\*) (2) You must provide the training when they are first hired and then annually.

**AMENDATORY SECTION** (Amending WSR 12-24-071, filed 12/4/12, effective 1/4/13)

**WAC 296-800-310 Summary.**

**Your responsibility:**

To provide and maintain emergency exit routes and to install and maintain adequate employee alarm systems.

**IMPORTANT:**

An employer who demonstrates compliance with the exit route provisions of NFPA 101-2009, the Life Safety Code, will be in compliance with the corresponding requirements of this section.

~~((Exit routes:~~

~~You must:~~

~~Provide an adequate number of exit routes.~~

~~WAC 296-800-31005.~~

~~Make sure that exit routes are large enough.~~

~~WAC 296-800-31010.~~

~~Make sure that exit routes meet their specific design and construction requirements.~~

~~WAC 296-800-31015.~~

~~Make sure that each exit route leads outside.~~

~~WAC 296-800-31020.~~

~~Provide unobstructed access to exit routes.~~

~~WAC 296-800-31025.~~

~~Exit doors must be readily opened from the inside.~~

~~WAC 296-800-31030.~~

~~Use side-hinged doors to connect rooms to exit routes.~~

~~WAC 296-800-31035.~~

~~Provide outdoor exit routes that meet requirements.~~

~~WAC 296-800-31040.~~

~~Minimize danger to employees while they are using emergency exit routes.~~

~~WAC 296-800-31045.~~

~~Mark exits adequately.~~

~~WAC 296-800-31050.~~

~~Provide adequate lighting for exit routes and signs.~~

~~WAC 296-800-31053.~~

~~Maintain the fire retardant properties of paints or other coatings.~~

~~WAC 296-800-31055.~~

~~Maintain emergency safeguards.~~

~~WAC 296-800-31060.~~

~~Maintain exit routes during construction and repair.~~

~~WAC 296-800-31065.~~

~~Provide doors in freezer or refrigerated rooms that open from the inside.~~

~~WAC 296-800-31067.~~

~~Employee alarm systems:~~

~~You must:~~

~~Install and maintain an appropriate employee alarm system.~~

~~WAC 296-800-31070.~~

~~Establish procedures for sounding emergency alarms.~~

~~WAC 296-800-31075.~~

~~Test the employee alarm system.~~

~~WAC 296-800-31080.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <b><u>Exit routes</u></b>  |                          |
| <u>Provide an adequate number of exit routes</u>   | <u>WAC 296-800-31005</u> |
| <u>Make sure that exit routes are large enough</u>   | <u>WAC 296-800-31010</u> |
| <u>Make sure that exit routes meet their specific design and construction requirements</u> | <u>WAC 296-800-31015</u> |
| <u>Make sure that each exit route leads outside</u>  | <u>WAC 296-800-31020</u> |
| <u>Provide unobstructed access to exit routes</u>  | <u>WAC 296-800-31025</u> |

| <u>You must meet the requirements ...</u>                                       | <u>in this section:</u>  |
|---|--------------------------|
| <u>Exit doors must be readily opened from the inside</u>                        | <u>WAC 296-800-31030</u> |
| <u>Use side-hinged doors to connect rooms to exit routes</u>                    | <u>WAC 296-800-31035</u> |
| <u>Provide outdoor exit routes that meet these requirements</u>                 | <u>WAC 296-800-31040</u> |
| <u>Minimize danger to employees while they are using emergency exit routes</u>  | <u>WAC 296-800-31045</u> |
| <u>Mark exits adequately</u>  | <u>WAC 296-800-31050</u> |
| <u>Provide adequate lighting for exit routes and signs</u>                      | <u>WAC 296-800-31053</u> |
| <u>Maintain the fire retardant properties of paints or other coatings</u>       | <u>WAC 296-800-31055</u> |
| <u>Maintain emergency safeguards</u>  | <u>WAC 296-800-31060</u> |
| <u>Maintain exit routes during construction and repair</u>                      | <u>WAC 296-800-31065</u> |
| <u>Provide doors in freezer or refrigerated rooms that open from the inside</u> | <u>WAC 296-800-31067</u> |
| <u>Install and maintain an appropriate employee alarm system</u>                | <u>WAC 296-800-31070</u> |
| <u>Establish procedures for sounding emergency alarms</u>                       | <u>WAC 296-800-31075</u> |
| <u>Test the employee alarm system</u>   | <u>WAC 296-800-31080</u> |

**Exemption:** This rule does not apply to vehicles, vessels, or other mobile structures.

**Note:** The introduction has important information about building, electrical and fire codes that may apply to you in addition to WISHA rules. See "How do the WISHA rules relate to building, fire, and electrical codes" in the introduction section of this book.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31005 Provide an adequate number of exit routes.** (1) You must(⊕

⊕) provide a minimum of two exit routes to provide different ways for employees to leave the workplace safely during an emergency (at least two of the exit routes must be remote from one another so employees can safely exit if one exit route becomes blocked or unavailable).

((\*) (2) You must provide an adequate number (at least two) of exit routes, considering the kind, number, location and capacity, appropriate to each building according to the following conditions:

- ((-) (a) Number of employees.
- ((-) (b) Size of building.
- ((-) (c) Arrangement of workplace.
- ((-) (d) Building occupancy.

**Note:** A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicates that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire exits or accessible windows, should be available where only one exit route is provided.

**AMENDATORY SECTION** (Amending WSR 11-04-080, filed 2/1/11, effective 4/1/11)

**WAC 296-800-31010 Make sure that exit routes are large enough.** (1) You must(⊕

⊕) make sure each exit route is large enough to accommodate the maximum-permitted occupant load for each floor served by the route.

((\*) (2) You must make sure the capacity of an exit route does not decrease at any point.

((\*) (3) You must make sure the exit route has a minimum ceiling height of 7 feet 6 inches and that no projection from the ceiling is less than 6 feet 8 inches from the floor.

((-) Objects that stick out into the exit route, such as fans hanging from the ceilings or cabinets on walls, must not reduce the minimum height of the exit route to less than 6 feet 8 inches from the floor.

((\*) (4) You must make sure exit routes are at least 28 inches wide at all points between any handrails.

((-) (a) If necessary, routes must be wider than 28 inches to accommodate the expected occupant load.

((-) (b) Make sure objects that stick out into the exit route, such as cabinets on walls, do not reduce the minimum width of the exit route.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31015 Make sure that exit routes meet their specific design and construction requirements.** (1) You must(⊕

⊕) make sure each exit is a permanent part of the workplace.

((\*) (2) You must make sure an exit route has only those openings necessary to permit access to, or exit from, occupied areas of the workplace.

((\*) (3) You must make sure any opening into an exit through a fire wall is protected by a self-closing fire door that remains closed.

((\*) (4) You must make sure each fire door, its frame, and its hardware is listed or approved by a nationally recognized testing laboratory.

((\*) (5) You must make sure construction materials, used to separate an exit route, have at least:

((-) (a) One-hour fire resistance rating if the exit connects three stories or less.

((-) (b) Two-hour fire resistance rating if the exit connects four stories or more.

((\*) (6) You must make sure employees are provided with stairs or a ramp, if the exit route is not substantially level.

AMENDATORY SECTION (Amending WSR 08-18-056, filed 9/2/08, effective 11/2/08)

**WAC 296-800-31020 Make sure that each exit route leads outside.** (1) You must((:

\*) make sure that building exit routes lead:

((-) (a) Directly outside or to a street, walkway, refuge area, or to an open space with access to the outside.

((-) (b) To streets, walkways, or open spaces large enough to accommodate all building occupants likely to use the exit.

((\*) (2) You must make sure the exit routes clearly show the route employees use to leave the building in an emergency.

((\*) (3) You must install a standard safeguard with a warning sign, if a doorway or corner of a building could allow an employee to walk in front of an engine or trolley.

((\*) (4) You must use doors, partitions, or other effective means to show employees the correct route out of the building, if the stairs in your exit route lead anywhere but out of the building.

**Note:** If the stairs in your exit route lead past the exit to the basement, you might install a gate at the point they lead towards that basement. The gate could help your employees stay on the exit route taking them out of the building.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31025 Provide unobstructed access to exit routes.** (~~You must~~) (1) You must provide exit routes that are always free of obstructions so all employees can safely exit the building during an emergency.

(2) You must make sure employees are not required to travel to a dead end or through a room that can be locked, such as a restroom.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31030 Exit doors must be readily opened from the inside.**

**Exemption:** An exit door may be locked or blocked from the inside in a mental, penal, or correctional institution, if supervisory personnel are continuously on duty and a plan exists to remove employees and inmates during an emergency.

You must((:

\*) make sure all exit doors readily open from the inside without keys, tools, or special knowledge. A device that locks only from the outside, such as a panic bar, is permitted. An exit door must be free of any device or alarm that could restrict emergency use of an exit if the device or alarm fails.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-31035 Use side-hinged doors to connect rooms to exit routes.** You must((:

\*) use a side-hinged exit door to connect any room to an exit route. The door must swing out when the room:

((-) (1) Is occupied by more than fifty persons; or

((-) (2) Contains highly flammable or explosive materials.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31040 Provide outdoor exit routes that meet these requirements.** You must((:

\*) make sure an outdoor exit route (such as an interior balcony, porch, gallery, or roof) meets all requirements for an indoor exit route. In addition, an outdoor exit route must also:

((-) (1) Have guardrails to protect unenclosed sides.

((-) (2) Be covered if snow or ice is likely to accumulate without regular removal.

((-) (3) Be reasonably straight with smooth, solid, substantially level floors.

((-) (4) Have no dead ends more than twenty feet long that branch off of the exit route.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31045 Minimize danger to employees while they are using emergency exit routes.** (1) You must((:

\*) maintain each exit route to minimize danger to employees during an emergency.

((\*) (2) You must keep each exit route free of explosive or highly flammable furnishings and decorations.

((\*) (3) You must not require employees to travel toward areas where high hazard materials are stored, unless the route is protected by partitions or physical barriers. High hazard materials are materials that:

((-) (a) Burn quickly.

((-) (b) Emit poisonous fumes when burned.

((-) (c) Are explosive.

AMENDATORY SECTION (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-31050 Mark exits adequately.** (~~You must~~:

\*) (1) You must mark each exit with a clearly visible, distinctive sign reading "exit."

((\*) (2) You must make sure the letters in the word "EXIT" are at least six inches high and 3/4 inch wide.

((\*) (3) You must mark any doorway or passage that might be mistaken for an exit with "not an exit" or with an indication of its actual use.

((\*) (4) You must make sure exit signs are a distinctive color.

((\*) (5) You must make sure signs are posted and arranged along exit routes to adequately show how to get to the nearest exit and clearly indicate the direction of travel.

((\*) (6) You must not obstruct or conceal exit signs in any way.

((\*) (7) You must keep exit doors free of signs or decorations that obscure their visibility.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31053 Provide adequate lighting for exit routes and signs.** (1) You must((:

\*) illuminate each exit route adequately and reliably.

((\*) (2) You must have at least five foot-candles illumination from a reliable light source.

((\*) (3) You must make sure any exit signs illuminated by artificial lights and made of translucent material (other than internally illuminated types).

((-) (a) Have screens, discs or lens of at least twenty-five square inches in size; and

((-) (b) Show red or other designated color on the approach side of the exit.

((\*) (4) You must make sure brightly lit signs, displays, or objects in or near the line of vision do not distract attention from the exit sign.

((\*) (5) You must make sure exit signs that are self-lighting have a minimum luminance surface value of .06 footlamberts.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31055 Maintain the fire retardant properties of paints or other coatings.** You must((:

\*) maintain any paints or other coatings with fire retardant properties so they retain their fire retardant properties.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31060 Maintain emergency safeguards.** You must((:

\*) maintain each safeguard in proper working order to protect employees during an emergency. Emergency safeguards include items such as:

((-) (1) Sprinkler systems.

((-) (2) Alarm systems.

((-) (3) Fire doors.

((-) (4) Exit lighting.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31065 Maintain exit routes during construction and repair.** (1) You must((:

\*) have enough exit routes that comply with these rules before letting your employees occupy a workplace under new construction.

((\*) (2) You must make sure that employees do not occupy an existing workplace unless:

((-) (a) All exits and existing fire protection are maintained; or

((-) (b) Alternate fire protection is provided that ensures an equivalent level of safety.

((\*) (3) You must make sure that flammable or explosive materials used during construction or repair do not expose employees to additional hazards or prevent emergency escape.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31067 Provide doors in freezer or refrigerated rooms that open from the inside.** You must((:

\*) make sure that walk-in refrigerators or freezer rooms have doors with opening devices allowing them to be opened from the inside even when they are locked from the outside.

AMENDATORY SECTION (Amending WSR 08-18-056, filed 9/2/08, effective 11/2/08)

**WAC 296-800-31070 Install and maintain an appropriate employee alarm system.**

**Exemptions:**

- If you have ten or fewer employees in a particular workplace, you can use direct voice communication to sound the alarm, if all employees can hear it. For this kind of workplace, you do not need a back-up system.
- In workplaces where employees would not otherwise be able to recognize audible or visible alarms, you can use tactile devices to alert them.

(1) You must((:

\*) make sure that a working employee alarm system with a distinctive signal to warn employees of fire or other emergencies is installed and maintained.

**Exemption:**

You do not need an alarm system if employees can promptly see or smell a fire or other hazard in time to provide adequate warning to other employees.

((\*) (2) You must make sure that the following systems meet the requirements of this rule, if you use them as your employee alarm system:

((-) (a) Supervisory alarms.

((-) (b) Discharge alarms.

((-) (c) Detection systems required on fixed extinguishing systems.

((-) (d) Detection systems required on fire suppression systems.

((\*) (3) You must make sure that your employee alarm systems are:

((-) (a) Providing enough warning to allow employees to safely escape from the workplace, the immediate work area, or both.

((-) (b) Noticeable above surrounding noise or light levels by all employees in the affected portions of the workplace.

((-) (c) Distinctive and recognizable as a signal, to evacuate the work area.

((-) (d) Restored to working order as soon as possible, after each test or alarm.

((-) (e) Supervised, if installed after July 1, 1982, and if it has that capacity.

((-) (f) Able to alert assigned personnel whenever a malfunction exists in the system.

((-) (g) Adequately warning employees of emergencies.

((-) (h) Serviced, maintained, and tested by a person trained in the alarm system's design and functions to keep the system operating reliably and safely.

((-) (i) In working order, except when undergoing repairs or maintenance.

((-) (j) Warning employees of fire or other emergencies with a distinctive signal, if they are not able to see or smell a fire or other hazard.

((-) (k) Manual actuation devices that, if provided, are unobstructed, easy to find, and readily accessible.

((-) (l) Using alarm devices, components, combinations of devices, or systems with approved construction and installation. This applies to steam whistles, air horns, strobe lights, or similar lighting devices, as well as tactile devices.

((-) (m) Supplied with spare alarm devices available to restore the system promptly if a component breaks, is worn, or destroyed.

((-) (n) Kept in full operating condition by maintaining and replacing power supplies as often as necessary.

((-) (o) Supplied with a back-up means of alarm, such as employee runners or telephones, when regular systems are out of service.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31075 Establish procedures for sounding emergency alarms.** (1) You must((=

•) explain to each employee how to sound the alert for emergencies. Methods of reporting emergencies can include:

((-) (a) Manual pull box alarms.

((-) (b) Public address systems.

((-) (c) Radio.

((-) (d) Telephones.

((•) (2) You must post emergency numbers near telephones, employee notice boards, or other conspicuous locations, if you use telephones to report emergencies.

((•) (3) You must require that all emergency messages have priority over all nonemergency messages if the communication system also serves as an employee alarm system.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-31080 Test the employee alarm system.** (1) You must((=

•) test the reliability and adequacy of your employee alarm system every two months.

((-) Use a different activation device in each test of a multiactuation device system, so the entire alarm system gets tested.

((•) (2) You must make sure that supervised (monitored) employee alarm systems are tested at least once a year for reliability and adequacy.

**AMENDATORY SECTION** (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

**WAC 296-800-320 Summary.**

**Your responsibility:**

To conduct an investigation of certain types of accidents.

~~((You must:~~

~~Make sure equipment involved in a work-related accident is not moved.~~

~~WAC 296-800-32010~~

~~Assign people to assist the department of labor and industries~~

~~WAC 296-800-32015~~

~~Conduct a preliminary investigation for all serious injuries~~

~~WAC 296-800-32020~~

~~Document the investigation findings~~

~~WAC 296-800-32025))~~

| <u>You must meet the requirements ...</u>                                   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Make sure equipment involved in a work-related accident is not moved</u> | <u>WAC 296-800-32010</u> |
| <u>Assign people to assist the department of labor and industries</u>       | <u>WAC 296-800-32015</u> |
| <u>Conduct a preliminary investigation for all serious injuries</u>         | <u>WAC 296-800-32020</u> |
| <u>Document the preliminary investigation findings</u>                      | <u>WAC 296-800-32025</u> |

**AMENDATORY SECTION** (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

**WAC 296-800-32010 Make sure equipment involved in a work-related accident is not moved.** (1) You must((=

•) not move equipment involved in a work-related accident if any of the following results:

((-) (a) A death.

((-) (b) An inpatient hospitalization.

((-) (c) An amputation.

((-) (d) The loss of an eye.

((•) (2) You must not move the equipment until a representative of the department of labor and industries investigates the incident and releases the equipment unless:

((-) Moving the equipment is necessary to:

((■) (a) Remove any victims.

((■) (b) Prevent further incidents and injuries.

**AMENDATORY SECTION** (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

**WAC 296-800-32015 Assign people to assist the department of labor and industries.** You must((=

•) assign witnesses and other employees to assist department of labor and industries personnel who arrive at the scene to investigate the incident involving:

- ((-) (1) A death.
- ((-) (2) An inpatient hospitalization.
- ((-) (3) An amputation.
- ((-) (4) The loss of an eye.

Include:

- ((-) (5) The immediate supervisor.
- ((-) (6) Employees who were witnesses to the incident.
- ((-) (7) Other employees the investigator feels are necessary to complete the investigation.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-32020 Conduct a preliminary investigation for all serious injuries.** (1) You must((:

\*) make sure your preliminary investigation is conducted to evaluate the facts relating to the cause of the incident by the following people:

- ((-) (a) A person designated by the employer.
- ((-) (b) The immediate supervisor of the injured employee.
- ((-) (c) Witnesses.
- ((-) (d) An employee representative, such as a shop steward or other person chosen by the employees to represent them.
- ((-) (e) Any other person who has the experience and skills.

((\*) (2) If the employee representative is the business agent of the employee bargaining unit and is unavailable to participate without delaying the investigation group, you may proceed, by using one of the following:

- ((-) (a) The shop steward.
- ((-) (b) An employee representative member of your safety committee.
- ((-) (c) A person selected by all employees to represent them.

**Note:** A preliminary investigation includes noting information such as the following:

- Where did the accident or incident occur?
- What time did it occur?
- What people were present?
- What was the employee doing at the time of the accident or incident?
- What happened during the accident or incident?

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-32025 Document the preliminary investigation findings.** You must((:

\*) document the preliminary investigation findings for use at any formal investigation.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-330 Releasing accident investigation reports.** (1) The department must((:

\*) keep accident investigations and related reports confidential.

((\*) (2) The department must not freely release results of accident investigations and related reports that are confidential.

((\*) (3) The department must make available accident investigation reports, without the need of a court order, only to the following:

- ((-) (a) Injured workers, their legal representatives, or their labor organization representatives.
- ((-) (b) The legal representative or labor organization representative of a deceased worker.
- ((-) (c) The employer of any injured or deceased worker.
- ((-) (d) Any other employer or person whose actions or business operations are the subject of the report or investigation.

((-) (e) Any attorney representing a party in any pending legal action in which an investigative report constitutes material and relevant evidence.

((-) (f) Employees of governmental agencies in the performance of their official duties.

((-) (g) Any beneficiary of a deceased worker actually receiving benefits under the terms of Title 51 RCW, the Industrial Insurance Act.

**Note:** The records officer may provide accident investigation reports to the closest surviving member of the deceased worker's immediate family.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-340 Protecting the identity of the source of confidential information.** (1) The department must((:

\*) not reveal the source of information when a promise has been made to keep the identity of the source confidential.

((\*) (2) The department must not disclose information that would reveal the source's identity, whenever a department file contains an investigative report or information from a source under a promise of confidentiality.

((-) (a) The contents of an investigative report may be withheld only to the extent necessary to conceal the identity of the source.

((-) (b) When information is withheld, the records officer must give a general characterization of the information withheld, but must not reveal the identity of the information's source.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-360 Rule.** (~~Your responsibility: To~~) You must use the safety and health standards from national organizations and federal agencies, when directed to by WISHA rules.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-36005 Comply with standards national organizations or of federal agencies when referenced in WISHA rules.** You must((:

4) use the following to be in compliance with WISHA rules:

((-)) (1) The edition of the standard specified in the WISHA rule; or

((-)) (2) Any edition published after the edition specified in the WISHA rule.

**Note:** The specific standards referenced in the WISHA rules are available:

- For review at your local department of labor and industries office.
- See <http://www.wa.gov/lni/pa/direct.htm>.
- Through the local library system.
- Through the issuing organization.

**AMENDATORY SECTION** (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

**WAC 296-800-370 Definitions. Abatement action plans.** Refers to your written plans for correcting a WISHA violation.

**Abatement date.** The date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

**Acceptable.** As used in Electrical, WAC 296-800-280 means an installation or equipment is acceptable to the director of labor and industries, and approved:

- If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or

- With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another federal agency, or by a state, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this section; ~~((OR))~~ **OR**

- With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the director and his/her authorized representatives. Refer to federal regulation 29 C.F.R. 1910.7 for definition of nationally recognized testing laboratory.

**Accepted.** As used in Electrical, WAC 296-800-280 means an installation is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

**Access.** As used in safety data sheets (SDSs) as exposure records, WAC 296-901-14014 means the right and opportunity to examine and copy exposure records.

**Affected employees.** As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means employees exposed to hazards identified as violations in a citation.

**Analysis using exposure or medical records.**

- An analysis using exposure records or medical records can be any collection of data or a statistical study. It can be based on either:

- Partial or complete information from individual employee exposure or medical records; or
- Information collected from health insurance claim records.

- The analysis is not final until it has been:

- Reported to the employer; or
- Completed by the person responsible for the analysis.

**ANSI.** This is an acronym for the American National Standards Institute.

**Approved (~~(means)~~).**

- Approved by the director of the department of labor and industries or their authorized representative, or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).

- As used in Electrical, WAC 296-800-280 means acceptable to the authority enforcing this section. The authority enforcing this section is the director of labor and industries. The definition of acceptable indicates what is acceptable to the director and therefore approved.

**Assistant director.** The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

**ASTM.** This is an acronym for American Society for Testing and Materials.

**Attachment plug or plug.** As used in the basic electrical rules, WAC 296-800-280 means the attachment at the end of a flexible cord or cable that is part of a piece of electrical equipment. When it is inserted into an outlet or receptacle, it connects the conductors supplying electrical power from the outlet to the flexible cable.

**Bare conductor.** A conductor that does not have any covering or insulation.

**Bathroom.** A room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.

**Biological agents.** Organisms or their by-products.

**Board.** As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means the board of industrial insurance appeals.

**Ceiling.** An exposure limit that must not be exceeded during any part of the employee's workday. The ceiling must be determined over the shortest time period feasible and should not exceed fifteen minutes.

**Certification.** As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means refers to an employer's written statement describing when and how a citation violation was corrected.

**C.F.R.** This is an acronym for Code of Federal Regulations.

**Chemical.** Any element, chemical compound, or mixture of elements and/or compounds.

**Chemical agents (airborne or contact).** A chemical agent is any of the following:

- Airborne chemical agent which is any of the following:

- Dust((—)), solid particles suspended in air, that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.

• Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

- Fume((—)), solid particles suspended in air, that are created by condensation from the gaseous state.

- Gas((—)), a normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

- Mist((—)), liquid droplets suspended in air. Mist is created by:

• Condensation from the gaseous to the liquid state; ((OR)) or

• Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

- Vapor((—)), The gaseous form of a substance that is normally in the solid or liquid state.

- Contact chemical agent which is any of the following:

- Corrosive((—)), A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

- Irritant((—)), A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

- Toxicant((—)), A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

**Chemical manufacturer.** An employer with a workplace where one or more chemicals are produced for use or distribution.

**Chemical name.** The scientific designation of a chemical in accordance with one of the following:

- The nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC).
- The Chemical Abstracts Service (CAS) rules of nomenclature.

• A name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

**Circuit breaker.**

• Is a device used to manually open or close a circuit. This device will also open the circuit automatically and without damage to the breaker when a predetermined overcurrent is applied. (600 volts nominal or less.)

• Is a switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit. (Over 600 volts nominal.)

**Citation.** Refers to the citation and notice issued to an employer for any violation of WISHA safety and health rules. A citation and notice may be referred to as a citation and notice of assessment but is more commonly referred to as a citation.

**Commercial account.** As used in Hazard communication, WAC 296-901-140 means an arrangement in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.

**Common name.** As used in Hazard communication, WAC 296-901-140 means any designation or identification such as:

- Code name.
- Code number.
- Trade name.
- Brand name.
- Generic name used to identify a chemical other than by its chemical name.

**Compressed gas.** A gas or mixture of gases that, when in a container, has an absolute pressure exceeding:

- 40 psi at 70°F (21.1°C) ((OR)); or
- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C).

Compressed gas can also mean a liquid with a vapor pressure that exceeds 40 psi at 100°F (37.8°C).

**Conductor.** Wire that transfers electric power.

**Container.** As used in Hazard communication, WAC 296-901-140 means any container, except for pipes or piping systems, that contains a hazardous chemical. It can be any of the following:

- Bag.
- Barrel.
- Bottle.
- Box.
- Can.
- Cylinder.
- Drum.
- Reaction vessel.
- Storage tank.

**Correction date.** The date by which a violation must be corrected. Final orders or extensions that give additional time to make corrections establish correction dates. A correction date established by an order of the board of industrial insurance appeals remains in effect during any court appeal unless the court suspends the date.

**Corrective notice.** Refers to a notice changing a citation and is issued by the department after a citation has been appealed.

**Corrosive.** A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

**Covered conductor.** A conductor that is covered by something else besides electrical insulation.

**Damp location.** As used in basic electrical rules, WAC 296-800-280 means partially protected areas that are exposed to moderate moisture. Outdoor examples include roofed open porches and marquees. Interior examples include basements and barns.

**Department.** Those portions of the department of labor and industries responsible for enforcing the Washington Industrial Safety Act (WISHA).

**Designated representative.**

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written authorization.
- The legal representative of a deceased or legally incapacitated employee.

**Director.** The director means the director of the department of labor and industries or their designee.

**Distributor.** A business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers.

**Documentation.** As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means material that you submit to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and/or labor.

**Dry location.** As used in basic electrical rules, WAC 296-800-280 means areas not normally subjected to damp or wet conditions. Dry locations may become temporarily damp or wet, such as when constructing a building.

**Dust.** Solid particles suspended in air that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.
- Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

**Emergency washing facilities.** Emergency washing facilities are emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

**Electrical outlets.** Places on an electric circuit where power is supplied to equipment through receptacles, sockets, and outlets for attachment plugs.

**Employee.** Based on chapter 49.17 RCW, the term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

**Employee exposure record.** As used in safety data sheets (SDSs) as exposure records, WAC 296-901-14014 means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine,

breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

- Safety data sheets indicating that the material may pose a hazard to human health; ~~((OR))~~ or
- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

**Employer.** Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

**Exit.** Provides a way of travel out of the workplace.

**Exit route.** A continuous and unobstructed path of exit travel from any point within a workplace to safety outside.

**Explosive.** A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

**Exposed live parts.** Electrical parts that are:

- Not suitably guarded, isolated, or insulated ~~((AND))~~; and
- Capable of being accidentally touched or approached closer than a safe distance.

**Exposed wiring methods.** Involve working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

**Exposure or exposed.** As used in Hazard communication, WAC 296-901-140 and safety data sheets (SDSs) as exposure records, WAC 296-901-14014. An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation.
- Ingestion.
- Skin contact.
- Absorption.
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical ~~((non-occupational))~~ nonoccupational situations in the way it is:

- Used.
- Handled.
- Stored.
- Generated.
- Present.

**Exposure record.** See definition for employee exposure record.

**Extension ladder.** A portable ladder with 2 or more sections and is not self-supporting. The 2 or more sections travel in guides or brackets that let you change the length. The size of a portable ladder is determined by adding together the length of each section.

**Failure-to-abate.** Any violation(s) resulting from not complying with an abatement date.

**Final order.** Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice;
- Corrective notice;
- Decision and order from the board of industrial insurance appeals;
- Denial of petition for review from the board of industrial insurance appeals; or
- Decision from a Washington State superior court, court of appeals, or the state supreme court.

**Final order date.** The date a final order is issued.

**First aid.** The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Tests, such as X-rays, must not be confused with treatment.

**Flammable.** A chemical covered by one of the following categories:

- Aerosol flammable means a flammable aerosol as defined by WAC 296-901-14024, Appendix B—Physical hazard criteria;

- Gas, flammable means:

- A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less; or

- A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.

- Liquid, flammable means any liquid having a flashpoint at or below 199.4°F (93°C). Flammable liquids are divided into four categories as follows:

**((a))** - Category 1 **((shall))** must include liquids having flashpoints below 73.4°F (23°C) and having a boiling point at or below 95°F (35°C).

**((b))** - Category 2 **((shall))** must include liquids having flashpoints below 73.4°F (23°C) and having a boiling point above 95°F (35°C).

**((c))** - Category 3 **((shall))** must include liquids having flashpoints at or above 73.4°F (23°C) and at or below 140°F (60°C). When a Category 3 liquid with a flashpoint at or above 100°F (37.8°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it **((shall))** must be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F (37.8°C).

**((d))** - Category 4 **((shall))** must include liquids having flashpoints above 140°F (60°C) and at or below 199.4°F (93°C). When a Category 4 flammable liquid is heated for use to within 30°F (16.7°C) of its flashpoint, it **((shall))** must be handled in accordance with the requirements for a Category 3 liquid with a flashpoint at or above 100°F (37.8°C).

**((e))** - When liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of

its flashpoint, it **((shall))** must be handled in accordance with the requirements for a Category 4 flammable liquid.

- Solid, flammable means a solid, other than a blasting agent or explosive as defined in 29 C.F.R. 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 C.F.R. 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

**Flashpoint.**

- The minimum temperature at which a liquid gives off a vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the liquid and **((shall))** must be determined as follows:

- The flashpoint of liquids having a viscosity less than 45 Saybolt Universal Second(s) at 100°F (37.8°C) and a flashpoint below 175°F (79.4°C) **((shall))** must be determined in accordance with the Standard Method of Test for Flash Point by the Tag Closed Tester, ASTM D-56-69, or an equivalent method as defined by WAC 296-901-14024, Appendix B—Physical hazard criteria.

**Flexible cords and cables.** Typically used to connect electrical equipment to an outlet or receptacle. These cords can have an attachment plug to connect to a power source or can be permanently wired into the power source. Flexible cords, extension cords, cables and electrical cords are all examples of flexible cord.

**Floor hole.** An opening in any floor, platform, pavement, or yard that measures at least one inch but less than 12 inches at its smallest dimension and through which materials and tools (but not people) can fall.

Examples of floor holes are:

- Belt holes,
- Pipe openings,
- Slot openings.

**Floor opening.** An opening in any floor, platform, pavement, or yard that measures at least 12 inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways,
- Stair or ladder openings,
- Pits,
- Large manholes,

The following are NOT considered floor openings:

- Openings occupied by elevators,
- Dumbwaiters,
- Conveyors,
- Machinery,
- Containers.

**Foreseeable emergency.** As used in Hazard communication, WAC 296-901-140 means any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

**Fume.** Solid particles suspended in air that are created by condensation from the gaseous state.

**Gas.** A normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

**Ground.** As used in Electrical, WAC 296-800-280, a connection between an electrical circuit or equipment and the earth or other conducting body besides the earth. This connection can be intentional or accidental.

**Grounded.** A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth.

**Grounded conductor.** A system or circuit conductor that is intentionally grounded.

**Ground-fault circuit-interrupter.** A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

**Grounding conductor.** Is used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

**Grounding conductor, equipment.** A conductor used to connect noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

**Guarded.** Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of being accidentally touched or approached closer than a safe distance.

**Hand-held drench hoses.** Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose that can be used to irrigate and flush the face or other body parts.

**Handrail.** A single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

**Harmful physical agent.** Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances*(RTECS); or
- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; ~~((OR))~~ or
- Is the subject of a safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

**Hazard.** Any condition, potential or inherent, which can cause injury, death, or occupational disease.

**Hazard warning.** As used in Hazard communication, WAC 296-901-140 can be a combination of words, pictures, symbols, or combination appearing on a label or other appropriate form of warning which shows the specific physical and

health hazard(s), including target organ effects, of the chemical(s) in the container(s).

**Note:** See definition for physical hazard and health hazard to determine which hazards must be covered.

**Hazardous chemical.** Any chemical that is a physical or health hazard.

**Health hazard.** A chemical, mixture, biological agent, or physical agent that may cause health effects in short- or long-term exposed employees. Based on statistically significant evidence from at least one study conducted using established scientific principles. Health hazards include:

- Carcinogens<sub>2</sub>
- Toxic or highly toxic agents<sub>2</sub>
- Reproductive toxins<sub>2</sub>
- Irritants<sub>2</sub>
- Corrosives<sub>2</sub>
- Sensitizers<sub>2</sub>
- Hepatotoxins (liver toxins)<sub>2</sub>
- Nephrotoxins (kidney toxins)<sub>2</sub>
- Neurotoxins (nervous system toxins)<sub>2</sub>
- Substances that act on the hematopoietic system (blood or blood-forming system)<sub>2</sub>
- Substances that can damage the lungs, skin, eyes, or mucous membranes<sub>2</sub>
- Hot or cold conditions.

**Identity.** As used in Hazard communication, WAC 296-901-140 means any chemical or common name listed on the safety data sheet (SDS) for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals<sub>2</sub>
- Chemical label<sub>2</sub>
- MSDSs<sub>2</sub>

**Imminent danger violation.** Any violation(s) resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

**Importer.** The first business within the Customs Territory of the USA that:

- Receives hazardous chemicals produced in other countries ~~((AND))~~; and
- Supplies them to distributors or employers within the USA<sub>2</sub>

**Inpatient hospitalization.** To be admitted into a hospital or equivalent facility for medical treatment.

**Insulated.** A conductor has been completely covered by a material that is recognized as electrical insulation and is thick enough based on:

- The amount of voltage involved ~~((AND))~~; and
- The type of covering material<sub>2</sub>

**Interim waiver.** An order granted by the department allowing an employer to vary from WISHA requirements until the department decides to grant a permanent or temporary waiver.

**Irritant.** A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

**Ladder<sub>2</sub>** Consists of 2 side rails joined at regular intervals by crosspieces called steps, rungs, or cleats. These steps are used to climb up or down.

**Listed<sub>2</sub>** Equipment is listed if it:

- Is listed in a publication by a nationally recognized laboratory (such as UL, underwriters laboratory) that inspects the production of that type of equipment(~~(-AND))~~; and
- States the equipment meets nationally recognized standards or has been tested and found safe to use in a specific manner.

**Medical treatment<sub>2</sub>** Treatment provided by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even if provided by a physician or registered professional personnel.

**Mist<sub>2</sub>** Liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state; (~~(OR))~~ or
- Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

**Mixture<sub>2</sub>** As used in Hazard communication, WAC 296-901-140, any combination of 2 or more chemicals (if that combination did not result from a chemical reaction).

**Movable equipment<sub>2</sub>** As used in WAC 296-800-35052, a hand-held or nonhand-held machine or device;

- That is powered or nonpowered; (~~(AND))~~ and
- Can be moved within or between worksites.

**Must** (~~(Must means))~~, Mandatory.

**NEMA<sub>2</sub>** These initials stand for National Electrical Manufacturing Association.

**NFPA<sub>2</sub>** This is an acronym for National Fire Protection Association.

**Nose<sub>2</sub>** The portion of the stair tread that projects over the face of the riser below it.

**Occupational Safety and Health Administration (OSHA)<sub>2</sub>** Created in 1970 when the U.S. Congress passed the Occupational Safety and Health Act, the Occupational Safety and Health Administration (OSHA) provides safety on the job for workers. OSHA oversees state plans (such as WISHA in Washington) that have elected to administer the safety and health program for their state. OSHA requires WISHA rules to be at least as effective as OSHA rules.

**Office work environment<sub>2</sub>** An indoor or enclosed occupied space where clerical work, administration, or business is carried out.

In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.
- Office areas of manufacturing and production facilities, not including process areas.
- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

**Open riser<sub>2</sub>** A stair step with an air space between treads has an open riser.

**Organic peroxide<sub>2</sub>** This is an organic compound containing the bivalent-O-O-structure. It may be considered a

structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

**Outlet<sub>2</sub>** See definition for electrical outlets.

**Oxidizer<sub>2</sub>** A chemical other than a blasting agent or explosive as defined in WAC 296-52-60130 or C.F.R. 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

**Permissible exposure limits (PELs)<sub>2</sub>** Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable WISHA rules.

**Person<sub>2</sub>** Based on chapter 49.17 RCW, one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

**Personal eyewash units<sub>2</sub>** Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

**Personal service room<sub>2</sub>** Used for activities not directly connected with a business' production or service function such as:

- First aid<sub>2</sub>
- Medical services<sub>2</sub>
- Dressing<sub>2</sub>
- Showering<sub>2</sub>
- Bathrooms<sub>2</sub>
- Washing<sub>2</sub>
- Eating<sub>2</sub>

**Personnel<sub>2</sub>** See the definition for employees.

**Physical hazard<sub>2</sub>** Means a chemical that is classified as posing one of the following hazardous effects: Explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas. WAC 296-901-14024, Appendix B—Physical hazard criteria.

**Platform<sub>2</sub>** Platform means an extended step or landing that breaks a continuous run of stairs.

**Plug<sub>2</sub>** See definition for attachment plug.

**Potable water<sub>2</sub>** Water that is suitable for drinking by the public and meets the requirements of chapter 246-290 or 246-291 WAC.

**Predictable and regular basis<sub>2</sub>** Employee functions such as, but not limited to, inspection, service, repair and maintenance which are performed:

- At least once every 2 weeks (~~(OR))~~; or
- ((4)) Four man-hours or more during any sequential 4-week period (to calculate man-hours multiply the number of employees by the number of hours during a 4-week period).

**Produce<sub>2</sub>** As used in Hazard communication, WAC 296-901-140, any one of the following:

- Manufacture<sub>2</sub>
- Process<sub>2</sub>
- Formulate<sub>2</sub>
- Blend<sub>2</sub>
- Extract<sub>2</sub>
- Generate<sub>2</sub>
- Emit<sub>2</sub>

- Repackage.

**Purchaser.** As used in Hazard communication, WAC 296-901-140, an employer who buys one or more hazardous chemicals to use in their workplace.

**Pyrophoric.** A chemical is pyrophoric if it will ignite spontaneously in the air when the temperature is 130°F (54.4°C) or below.

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

- Possession of a recognized degree, certificate, or professional standing; ~~((OR))~~ **or**
- Extensive knowledge, training and experience.

**Railing or standard railing.** A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

**Reassume jurisdiction.** The department has decided to take back its control over a citation and notice being appealed.

**Receptacle or receptacle outlet.** As used in basic electrical rules, WAC 296-800-280 means outlets that accept a plug to supply electric power to equipment through a cord or cable.

**Record.** A record is any item, collection, or grouping of information. Examples include:

- Paper document.
- Microfiche.
- Microfilm.
- X-ray film.
- Computer record.

**Refuge area.**

• A protected space along an exit route that is separated from other spaces inside the building by a barrier with at least a one-hour fire resistance rating; ~~((OR))~~ **or**

• A floor in a building with an automatic sprinkler system that has at least two spaces that are separated by smoke-resistant partitions. See WAC 296-24-607 for requirements for automatic sprinkler systems.

**Repeat violation.** A violation is a repeat violation if the employer has been cited one or more times previously for a substantially similar hazard.

**Responsible party.** As used in Hazard communication, WAC 296-901-140. Someone who can provide appropriate information about the hazardous chemical and emergency procedures.

**Rise.** The vertical distance from the top of a tread to the top of the next higher tread.

**Riser.** The vertical part of the step at the back of a tread that rises to the front of the tread above.

**Rungs.** Rungs are the cross pieces on ladders that are used to climb up and down the ladder.

**Runway.** An elevated walkway above the surrounding floor or ground level. Examples of runways are footwalks along shafting or walkways between buildings.

**Safety data sheet (SDS).** Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous chemical, its hazards, and protective measures as required by safety data sheet and label preparation, WAC 296-901-140.

**Safety factor.** The term safety factor means the ratio of when something will break versus the actual working stress or safe load when it is used.

**Self-lighting or self-luminous.** A light source that:

- Is illuminated by a self-contained power source other than batteries; ~~((AND))~~ **and**
- Operates independently from external power sources.

**Serious violation.** Serious violation must be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

**Short-term exposure limit (STEL).** An exposure limit, averaged over a short time period (usually measured for 15 minutes) that must not be exceeded during any part of an employee's workday.

**Should.** Should means recommended.

**Single ladder.** A type of portable ladder with one section.

It is distinguished by all of the following:

- It has one section.
- It cannot support itself.
- Its length cannot be adjusted.

**Smoking.** A person is smoking if they are:

- Lighting up.
- Inhaling.
- Exhaling.
- Carrying a pipe, cigar or cigarette of any kind that is burning.

**Specific chemical identity.** This term applies to chemical substances. It can mean the:

- Chemical name.
- Chemical Abstracts Service (CAS) registry number.
- Any other information that reveals the precise chemical designation of the substance.

**Stair railing.** A vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail.

**Stairs or stairway.** A series of steps and landings:

- (-)** • Leading from one level or floor to another.
- (-)** • Leading to platforms, pits, boiler rooms, cross-overs, or around machinery, tanks, and other equipment.
- (-)** • Used more or less continuously or routinely by employees, or only occasionally by specific individuals.
- (-)** • With three or more risers.

**Standard safeguard.** Safety devices that prevent hazards by their attachment to:

- Machinery.
- Appliances.
- Tools.
- Buildings.
- Equipment.

These safeguards must be constructed of:

- Metal.
- Wood.
- Other suitable materials.

The department makes the final determination about whether a safeguard is sufficient for its use.

**Step ladder.** A portable ladder with:

- Flat steps.
- A hinge at the top allowing the ladder to fold out and support itself.
- Its length that cannot be adjusted.

**Time weighted average (TWA<sub>(6)(8)(h))</sub>.** An exposure limit, averaged over 8 hours, that must not be exceeded during an employee's work shift.

**Toeboard.** A barrier at floor level along exposed edges of a floor opening, wall opening, platform, runway, or ramp, to prevent falls of materials.

**Toxic chemical.** As used in first aid, WAC 296-800-150, is a chemical that produces serious injury or illness when absorbed through any body surface.

**Toxic substance.** Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS).
- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer.
- The subject of a safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

**Toxicant.** A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

**Trade secret.** Any confidential:

- Formula.
- Pattern.
- Process.
- Device.
- Information.
- Collection of information.

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-901-14018 for requirements dealing with trade secrets.

**Tread.** As used in stairs and stair railings, WAC 296-800-250 means the horizontal part of the stair step.

**Tread run.** As used in stairs and stair railings, WAC 296-800-250 means the distance from the front of one stair tread to the front of an adjacent tread.

**Tread width.** The distance from front to rear of the same tread including the nose, if used.

**UL (Underwriters' Laboratories, Inc.).** You will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

**Unstable (reactive).** As used in Hazard communication, WAC 296-901-140. An unstable or reactive chemical is one that in its pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

**Use.** As used in Hazard communication, WAC 296-901-140, means to:

- Package.
- Handle.
- React.
- Emit.
- Extract.
- Generate as a by-product.
- Transfer.

**Vapor.** The gaseous form of a substance that is normally in the solid or liquid state.

**Voltage of a circuit.** The greatest effective potential difference between any two conductors or between a conductor and ground.

**Voltage to ground.** The voltage between a conductor and the point or conductor of the grounded circuit. For underground circuits, it is the greatest voltage between the conductor and any other conductor of the circuit.

**Voltage, nominal.** Nominal voltage is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

**WAC.** This is an acronym for Washington Administrative Code, which are rules developed to address state law.

**Water-reactive.** As used in Hazard communication, WAC 296-901-140, a water-reactive chemical reacts with water to release a gas that is either flammable or presents a health hazard.

**Watertight.** Constructed so that moisture will not enter the enclosure or container.

**Weatherproof.** Constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

**Wet location.** As used in basic electrical rules, WAC 296-800-280 means:

- Underground installations or in concrete slabs or masonry that are in direct contact with the earth.
- Locations that can be saturated by water or other liquids.
- Unprotected locations exposed to the weather (like vehicle washing areas).

**WISHA.** This is an acronym for the Washington Industrial Safety and Health Act.

**Work area.** As used in Hazard communication, WAC 296-901-140, a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

**Worker.** See the definition for employee.

**Working days.** Means a calendar day, except Saturdays, Sundays, and legal holidays. Legal holidays include:

- (-) • New Year's Day - January 1;
- (-) • Martin Luther King, Jr. Day;
- (-) • Presidents' Day;
- (-) • Memorial Day;
- (-) • Independence Day - July 4;
- (-) • Labor Day;

- ((-)) • Veterans' Day - November 11;
- ((-)) • Thanksgiving Day;
- ((-)) • The day after Thanksgiving Day; and
- ((-)) • Christmas Day - December 25.

The number of working days must be calculated by not counting the first working day and counting the last working day.

~~((Worker See the definition for employee.))~~

### **Workplace.**

• The term workplace means:

- Any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

- As used in Hazard communication, WAC 296-901-140 means an establishment, job site, or project, at one geographical location containing one or more work areas.

**You.** See definition of employer.

**Your representative.** Your representative is the person selected to act in your behalf.

### NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 296-800-370    | 296-800-099    |

### NEW SECTION

**WAC 296-802-099 Definitions. Access.** The right and opportunity to examine and copy an employee record.

**Analysis using exposure or medical records.** Any collection of data or a statistical study based on either:

- (a) Information from individual employee exposure or medical records; or
- (b) Information collected from health insurance claim records.

### **Designated representative.**

- (a) Any individual or organization to which an employee gives written authorization.
- (b) A recognized or certified collective bargaining agent without regard to written employee authorization.
- (c) The legal representative of a deceased or legally incapacitated employee.

**Employee exposure record.** A record containing any of the following kinds of information:

- (a) Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained.
- (b) Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (such as the level of a chemical in the blood, urine, breath, hair, or fingernails) but not including results

which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs.

(c) Safety data sheets indicating that the material may pose a hazard to human health; or

(d) In the absence of the above:

(i) A chemical inventory or any other record that reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

(ii) Exposure records of other employees with past or present job duties or related working conditions.

### **Employee medical record.**

(a) A record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

(i) Medical and employment questionnaires or histories (including job description and occupational exposures).

(ii) The results of medical examinations (preemployment, preassignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for purposes of establishing a baseline or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record").

(iii) Medical opinions, diagnoses, progress notes, and recommendations.

(iv) First-aid records.

(v) Descriptions of treatments and prescriptions.

(vi) Employee medical complaints.

(b) An employee medical record does **not** include any of these types of medical information:

(i) Physical specimens (for example, blood or urine samples), which are routinely discarded as a part of normal medical practice.

(ii) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier, such as Social Security number or payroll number.

(iii) Records created solely in preparation for litigation that are privileged from discovery under applicable rules of procedure or evidence.

(iv) Records concerning voluntary employee assistance programs, such as alcohol, drug abuse, or personal counseling programs, if maintained separately from the employer's medical program and records.

**Exposure or exposed.** The contact an employee has with a toxic substance, harmful physical agent or oxygen deficient condition. Exposure can occur through various routes, such as inhalation, ingestion, skin contact, or skin absorption.

**First aid.** Any of the following are considered first aid:

(a) Using a nonprescription medication at nonprescription strength.

(b) Administering tetanus immunizations. Other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment.

(c) Cleaning, flushing or soaking wounds on the surface of the skin.

(d) Using wound coverings such as bandages, Band-Aids™, or gauze pads.

- (e) Using butterfly bandages or Steri-Strips™.
- (f) Using hot or cold therapy.
- (g) Using any nonrigid means of support, such as elastic bandages, wraps, or nonrigid back belts.
- (h) Using temporary immobilization devices, such as splints, slings, neck collars, or back boards, while transporting an accident victim.
- (i) Drilling a fingernail or toenail to relieve pressure.
- (j) Draining fluid from a blister.
- (k) Using eye patches.
- (l) Removing foreign bodies from the eye using only irrigation or a cotton swab.
- (m) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means.
- (n) Using finger guards.
- (o) Using massages.
- (p) Drinking fluids for relief of heat stress.

**Harmful physical agent.** Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- (a) Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS); or
- (b) Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
- (c) Is the subject of a safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

**Health professional.** A physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, who provides medical or other occupational health services to exposed employees.

**Record.** Any item, collection, or grouping of information. Examples include:

- (a) Paper document.
- (b) Microfiche.
- (c) Microfilm.
- (d) X-ray film.
- (e) Computer record.

**Specific chemical identity.** Any other information that reveals the precise chemical designation of the substance, such as:

- (a) Chemical name; or
- (b) Chemical abstracts service (CAS) registry number.

**Specific written authorization.** A written authorization containing at least the following:

- (a) The name and signature of the employee authorizing the release of medical information.
- (b) The date of the written authorization.
- (c) The name of the individual or organization that is authorized to release the medical information.
- (d) The name of the designated representative (individual or organization) that is authorized to receive the information.
- (e) A general description of the medical information that is authorized to be released.

(f) A general description of the purpose for the release of the medical information.

(g) A date or condition upon which the written authorization will expire.

**Toxic substance.** Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- (a) Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS).
- (b) Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer.
- (c) The subject of a safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

**Trade secrets.** Any confidential information that is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it. It can be a:

- (a) Formula.
- (b) Pattern.
- (c) Process.
- (d) Device.
- (e) Information.
- (f) Collection of information.

**AMENDATORY SECTION** (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-200 Keep employee medical and exposure records.**

**Summary:**

**Your responsibility:**

To keep employee medical records, exposure records, and analyses.

**IMPORTANT:**

- Physicians or other health care personnel may keep medical records for you.
- You may keep information in any form as long as the information is retrievable.
- Unless a specific occupational safety and health rule provides a different time period, you must keep records for the period required by this chapter.

~~((You must:~~

~~Keep employee medical records~~

~~WAC 296-802-20005.~~

~~Keep employee exposure records~~

~~WAC 296-802-20010.~~

~~Keep analyses of medical or exposure records~~

~~WAC 296-802-20015.))~~

| <u><b>You must meet the requirements ...</b></u>    | <u><b>in this section:</b></u> |
|---|--------------------------------|
| <u>Keep employee medical records</u>                | <u>WAC 296-802-20005</u>       |
| <u>Keep employee exposure records</u>               | <u>WAC 296-802-20010</u>       |
| <u>Keep analyses of medical or exposure records</u> | <u>WAC 296-802-20015</u>       |

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-20005 Keep employee medical records.** (1) You must(†

•) keep medical records for at least as long as the employee works for you plus thirty years.

- Exemption:**
- If an employee works for you for less than **one** year and you provide the records to them when they leave employment, you do not have to keep their medical records.
  - You do not need to keep the following records for any specific period:
    - Health insurance claims records maintained separately from your medical program and records.
    - Records of first-aid treatment, if made on-site by a non-physician and if kept separately from the employee medical record.

(2) You must(†

•) keep chest X-ray films in their original state, such as film or electronic image.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-20010 Keep employee exposure records.**

**IMPORTANT:**

You do not need to keep employee exposure records for exposure to toxic substances when they are:

- Purchased as a consumer product; ~~((AND))~~ and
- Used in the same manner and frequency that a consumer would use them.

(1) You must(†

•) keep employee exposure records for at least thirty years from the date the exposure record was made. These records include the following:

- (-) (a) The sampling results.
- (-) (b) The collection methodology (sampling plan).
- (-) (c) A description of the analytical and mathematical methods used.

(-) (d) Background data to environmental monitoring or measuring, such as laboratory reports and work sheets.

**Note:** You do not have to keep the actual background data for more than one year if you keep a summary of the data for thirty years.

(2) You must(†) keep a record, for at least thirty years, of the identity of any toxic substance used in your workplace. You must include:

- (\*) (a) Where the substance was used.
- (\*) (b) When the substance was used.

**Note:** The identity may be retained either as part of the exposure record or as a separate record.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-20015 Keep analyses of medical or exposure records.** You must(†

•) keep each analysis using medical or exposure records for at least thirty years.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-300 Inform employees about records. Summary:**

**Your responsibility:**

To inform current employees about their medical and exposure records.

~~((You must: Inform current employees about their medical and exposure records WAC 296-802-30005.))~~

|  |                                |
|--|--------------------------------|
| <u><b>You must meet the requirements ...</b></u>                         | <u><b>in this section:</b></u> |
| <u>Inform current employees about their medical and exposure records</u> | <u>WAC 296-802-30005</u>       |

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-30005 Inform current employees about their medical and exposure records.** (1) You must(†

•) inform employees covered by this rule about medical and exposure records when they first start employment, and then at least annually. Include the following information:

- (-) (a) Where the records are located.
- (-) (b) Who is responsible for the records.
- (-) (c) Who to contact for access to the records.
- (-) (d) Their rights to copy the records.
- (\*) (2) You must make copies of this rule available upon request to employees.

(\*) (3) You must distribute to your employees any information about this chapter that you are given by the department.

**Note:** Some of the ways to inform employees that you have medical and exposure records include email, letters, posters, or classroom training.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-400 Provide employees access to records and analyses.**

**Summary:**

**Your Responsibility:**

To provide employees access to records and analyses.

**IMPORTANT:**

- Employees or their designated representatives can use the collective bargaining process to gain access to records beyond what is required by this chapter.
- The requirements of this section apply to both current and former employees.

~~((You must: Provide access to employee medical records, exposure records, and analyses WAC 296-802-40005.))~~

~~Provide employee medical records  
WAC 296-802-40010.  
Provide employee exposure records  
WAC 296-802-40015.))~~

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Provide access to employee medical records, exposure records, and analyses</u> | <u>WAC 296-802-40005</u> |
| <u>Provide employee medical records</u>   | <u>WAC 296-802-40010</u> |
| <u>Provide employee exposure records</u>  | <u>WAC 296-802-40015</u> |

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-40005 Provide access to employee medical records, exposure records, and analyses.** (1) You must((+)

+) provide employees and their designated representatives access to requested records and analyses as follows:

((-) (a) In a reasonable time, place, and manner.

((-) (b) Within fifteen working days.

((■)) (c) If there is a delay, inform the requesting party of the reason and the earliest date the record will be made available.

**Exemption:** You do not have to provide analyses that are currently being worked on or have not been reported to you.

(2) You must((+)

+) provide a copy of the record, when requested, to the employee or designated representative without cost. This may be done by one of the following methods:

((-) (a) Make a copy for the requestor.

((-) (b) Make the record and a copier available.

((-) (c) Loan the record to the employee or designated representative for a reasonable time, so a copy can be made.

- Note:**
- Access to employee medical records will be provided to designated representatives only when the employee provides specific written authorization. See WAC 296-802-40010.
  - To locate or identify the records being requested, you may request, from employees or their designated representatives, only known and necessary information. For example, you may request dates and location of where the employee worked during the time period in question.
  - You are not required to perform an analysis of medical or exposure records at the request of an employee or designated representative.
  - When there is an original X-ray you may restrict access to an on-site examination or make other arrangements for a temporary loan.
  - When a record has been provided without cost to an employee or designated representative, and they request additional copies, you may charge a reasonable, nondiscriminatory administrative cost. For example, you may charge search and copying expenses but not overhead expenses.

- A reasonable fee for copying, as defined in chapter 70.02 RCW, should not exceed sixty-five cents per page for the first thirty pages and fifteen cents per page for all additional pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-40010 Provide employee medical records.** (1) You must((+)

+) make sure employees have access, upon request, to their own medical records.

**Note:**

- A physician, nurse, or other responsible health care professional who maintains employee medical records may delete from requested medical records the identity of individuals who provided confidential information regarding an employee's health status.

- If a physician represents you and believes that providing an employee access to their specific diagnosis of a terminal illness or psychiatric condition could harm the employee, they may request that the record be released only to a designated representative having specific written authorization.

- The physician representing you may recommend that the employee or designated representative do one of the following:
  - Consult with the physician to review and discuss requested records.

- Accept a summary of facts and opinions instead of requested records.

- Accept the release of requested records only to another physician or designated representative.

(2) You must((+)

+) make sure that individual employees are not identified in any portion of analyses that report the contents of employee medical records. ((-) Identifying information includes:

(a) Both direct identifiers such as name, address, Social Security number, and payroll number((-)); and

(b) Other information that could reasonably be used in the circumstances to identify individual employees such as exact age, height, or weight.

**Note:** If it is not feasible to remove personal identifying information from a document, you do not have to provide the portions where personal identifiers cannot be moved.

(3) You must((+)

+) provide designated representatives access to employee medical records when the employee provides specific written authorization.

((-) (a) If the written authorization does not contain an expiration date, it expires ninety days after it is signed.

((-) (b) Release only medical information that exists on the date of the written employee consent, unless the consent specifically states that future information may be released.

**Note:** An employee may revoke the specific written authorization in writing at any time.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-802-40015 Provide employee exposure records.** (1) You must((+)

\*) provide requested exposure records that show the type and amount of toxic substances or harmful physical agents to which the employee is or has been exposed, for an employee's current or transfer work assignment.

((-)) In the absence of records specific to the employee, exposure records of other employees with the same job duties or related working conditions will be used to the extent necessary to respond to the request.

((\*) (2) You must provide a designated representative, who does not have specific employee consent, access to employee exposure records only when a reasonable written request is made that includes the following:

((-) (a) The records requested.

((-) (b) The occupational health need for accessing these records.

**Note:** Trade secret information may be withheld from exposure records. See WAC 296-901-14018, Trade secrets, for more information.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-500 Respond to medical record access orders.**

**Summary:**

**IMPORTANT:**

This section describes how WISHA accesses employee medical records and your related rights and obligations.

**Your responsibility:**

To post written WISHA access orders.

~~((You must:~~

~~Respond to WISHA access orders for employee medical records~~

~~WAC 296-802-50005.~~

~~Content of WISHA written access orders~~

~~WAC 296-802-50010.))~~

| <u>You must meet the requirements ...</u>                          | <u>in this section:</u>  |
|--|--------------------------|
| <u>Respond to WISHA access orders for employee medical records</u> | <u>WAC 296-802-50005</u> |
| <u>Content of WISHA written access orders</u>                      | <u>WAC 296-802-50010</u> |

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-50005 Respond to WISHA access orders for employee medical records.** (1) You must((\*

\*) promptly respond to a written access order you receive from WISHA for personally identifiable employee medical information.

((\*) (2) You must post a copy of the cover letter you receive from WISHA for fifteen working days where employees can easily review it.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-50010 Content of WISHA written access orders.** A written access order from WISHA will contain at least the following information:

((\*) (1) The identity of employees whose medical information is being requested. ((-) This may be either by name, job classification, time clock number, department, or similar identifier.

((\*) (2) A description of the medical information that will be examined.

((\*) (3) The purpose for seeking access to this medical information((-

-), and any additional evidence supporting access to the medical information.

((\*) (4) A step-by-step description of how the records will be obtained, copied, reviewed, and stored, specifying the following:

((-) (a) Who will be in charge of on-site review of the records, or who will take possession of the records for ((~~off-site~~)) off-site review.

((-) (b) Where the records will be reviewed.

((-) (c) When review or receipt of the records is to take place.

((-) (d) If the records are to be reviewed on-site, what type of information will be copied and removed ((~~offsite~~)) off-site.

((\*) (5) How personal identifiers will be separated from the medical information and how long this information will be kept.

((\*) (6) The principal WISHA investigator's full name, business address and telephone number.

((\*) (7) The full names and titles of all individuals that will review the records.

((\*) (8) The WISHA industrial hygiene program manager's full name, business address and telephone number.

**Note:** WISHA does not need a written access order for the following types of employee medical records:

- Medical records and analyses that do not contain personal identification information.
- Examination of records to verify compliance with the medical surveillance requirements of another occupational health and safety rule.
- The following records when required by another occupational health and safety rule:
  - Medical opinions.
  - Biological monitoring results.
  - Results of medical examinations and laboratory tests.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

**WAC 296-802-600 Transfer and disposal of employee records.**

**Summary:**

**Your responsibility:**

To transfer or dispose of employee medical and exposure records when you go out of business.

~~((You must:~~

~~Transfer or dispose of employee medical and exposure records when you go out of business~~

~~WAC 296-802-60005.)~~

| <u><b>You must meet the requirements ...</b></u>  | <u><b>in this section:</b></u> |
|---|--------------------------------|
| <u>Transfer or dispose of employee medical and exposure records when you go out of business</u> | <u>WAC 296-802-60005</u>       |

AMENDATORY SECTION (Amending WSR 12-24-071, filed 12/4/12, effective 1/4/13)

**WAC 296-802-60005 Transfer or dispose of employee medical and exposure records when you go out of business.** You must(

\*) follow the requirements in Table 1 when transferring or disposing of records.

**Table 1  
Transfer or Disposal of Records**

| <b>If</b>  | <b>Then</b>  |
|--|--|
| Another employer continues the business when you go out of business  | Transfer all employee records to that employer   |
| No other employer continues the business when you go out of business | Notify affected current employees of their rights of access to records at least three months prior to the termination of your business |

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-802-900 Definitions.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-200 Shelter location and structure requirements.**

~~((Summary-))~~

**Your responsibility:**

To provide and maintain safe and healthful housing for your temporary workers.

~~((You must:~~

~~Provide and maintain sufficient grounds and open areas in temporary housing sites~~

~~WAC 296-833-20005~~

~~Follow these design and equipment requirements for shelters~~

~~WAC 296-833-20010.)~~

| <u><b>You must meet the requirements...</b></u>  | <u><b>in this section:</b></u> |
|--|--------------------------------|
| <u>Provide and maintain sufficient grounds and open areas in temporary housing sites</u> | <u>WAC 296-833-20005</u>       |
| <u>Follow these design and equipment requirements for shelters</u>                       | <u>WAC 296-833-20010</u>       |

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-20005 Provide and maintain sufficient grounds and open areas in temporary housing sites.** ~~((You must:))~~ (1) You must make sure that all temporary housing sites:

((\*) (a) Are adequately drained and are free from ground depressions in which water may accumulate;

((\*) (b) Have no history of flooding;

((\*) (c) Do not endanger any domestic or public water supply with their drainage; and

((\*) (d) Are located at least two hundred feet from a swamp, pool, sink hole, or other surface collection of water unless the water surface can be treated for mosquito control.

(2) You must make sure the housing area is large enough to prevent the buildings from being crowded too closely together.

(3) You must make sure the principal housing areas for sleeping and food preparation/eating are at least five hundred feet from livestock operations.

**Note:** Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance may be treated as outside the definition.

(4) You must make sure that grounds and open areas surrounding the shelters are maintained in a clean and sanitary condition.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-20010 Follow these design and equipment requirements for shelters.** ~~((You must:))~~ (1) You must make sure that every shelter in the camp provides protection against the elements.

(2) You must make sure each dwelling unit:

((\*) (a) Has at least seventy square feet of floor space for the first occupant and at least fifty square feet of floor space for each additional occupant;

((\*) (b) That is designated a family unit has a separate sleeping area for children over six years old;

((\*) (c) With designated sleeping room(s) has at least fifty square feet of floor space in the sleeping room for each occupant;

((\*) (d) Has at least a seven-foot ceiling;

((\*) (e) Has windows(

-)) covering a total area equal to at least one-tenth of the floor area (~~AND~~  
 -)) with at least one-half of which can be opened for ventilation;

((\*) (f) Has each exterior opening screened with 16-mesh material;

((\*) (g) Has screen doors with self-closing devices.

(3) You must make sure that the floors of each shelter are constructed of wood, asphalt, or concrete.

((\*) (a) Floors must be kept in good repair.

((\*) (b) If wooden floors are used, they must be:

((-) (i) Elevated one foot above ground level at all points to prevent dampness and to permit free air circulation;

((-) (ii) Smooth and tight.

**Note:** You may "bank" around outside walls with earth or other suitable material to guard against extreme low temperatures.

(4) You must provide beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles in every sleeping room.

((\*) (a) Beds must be at least thirty-six inches away from other beds, both side to side and end to end.

((\*) (b) The frame of the bed must keep mattresses at least twelve inches off the floor.

((\*) (c) Double-deck bunks must be spaced at least forty-eight inches away from other beds, both side to side and end to end.

((\*) (d) The minimum clear space between lower and upper bunks must be at least twenty-seven inches.

((\*) (e) Triple-deck bunks are not allowed.

(5) You must provide equipment that adequately heats the living area whenever the camp is used during cold weather.

**Note:** All heating, cooking, and water heating equipment must meet state and local ordinances, codes, and regulations concerning installation.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-300 ((Utilities)) Employers must provide utilities.**

~~((Summary-))~~

**Your responsibility:**

To provide utilities to your temporary housing camps.

~~((You must:~~

~~Provide electricity and lighting to temporary housing areas~~

~~WAC 296-833-30005~~

~~Provide adequate water~~

~~WAC 296-833-30010~~

~~Provide toilet facilities~~

~~WAC 296-833-30015~~

~~Follow local regulations for sewage disposal~~

~~WAC 296-833-30020.))~~

| <u>You must meet the requirements...</u>                           | <u>in this section:</u>  |
|--|--------------------------|
| <u>Provide electricity and lighting to temporary housing areas</u> | <u>WAC 296-833-30005</u> |

| <u>You must meet the requirements...</u>            | <u>in this section:</u>  |
|---|--------------------------|
| <u>Provide adequate water</u>                       | <u>WAC 296-833-30010</u> |
| <u>Provide toilet facilities</u>                    | <u>WAC 296-833-30015</u> |
| <u>Follow local regulations for sewage disposal</u> | <u>WAC 296-833-30020</u> |

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-30005 Provide electricity and lighting to temporary housing areas. ((You must:)) (1) You must supply electricity to all:**

((-) (a) Dwelling units

((-) (b) Kitchen facilities

((-) (c) Shower/bathroom facilities

((-) (d) Common areas

((-) (e) Laundry facilities.

**Reference:**

You need to follow additional requirements for electricity and lighting. See WAC 296-800-280, Basic electrical rules, in the safety and health core rules book for more information.

(2) You must provide lighting to camp buildings.

((\*) (a) Make sure general lighting and task lighting are adequate for normal daily activities.

((\*) (b) Make sure living quarters have:

((-) (i) One ceiling-type light fixture; and

~~((AND~~

-)) (ii) One separate floor or wall convenience outlet.

((\*) (c) Make sure laundry rooms, toilet rooms, and other common areas have at least:

((-) (i) One ceiling light fixture; or

~~((OR~~

-)) (ii) A wall light fixture.

AMENDATORY SECTION (Amending WSR 06-05-027, filed 2/7/06, effective 4/1/06)

**WAC 296-833-30010 Provide adequate water. ((You must:**

~~\*) (1) You must provide a water supply that is adequate and convenient for:~~

~~((-) (a) Drinking;~~

~~((-) (b) Cooking;~~

~~((-) (c) Bathing;~~

~~((-) (d) Laundry purposes.~~

~~((\*) (2) You must make sure the water supply system is:~~

~~((-) (a) Capable of delivering;~~

~~((\*) (i) Thirty-five gallons per person per day to the campsite;~~

~~((\*) (ii) At a peak rate of two and one-half times the average hourly demand.~~

~~((-) (b) Able to supply water to all fixtures at the same time with normal operating pressures;~~

~~((-) (c) Approved by the appropriate health authority.~~

~~((\*) (3) You must supply water to each housing area by either:~~

~~((-) (a) Piping water directly to the shelters; or~~

((-) (b) Providing yard hydrants within one hundred feet of the shelters.

((\*) (4) You must prohibit common drinking cups.

((\*) (5) You must provide one or more drinking fountain(s) for each one hundred occupants (or fraction of that number) where water under pressure is available.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-30015 Provide toilet facilities.**

**Note:** For the purposes of this rule, a restroom is a room maintained on the premises for use by employees that contains a toilet. This includes outhouses.

~~((You must:))~~

(1) You must provide enough toilets for the camp's capacity.

((\*) (a) Toilets and outhouses must be provided in a ratio of one for every fifteen people~~((:))~~;

(b) With a minimum of two units for any facility shared by men and women.

**Note:** Check with your local jurisdictions for regulations regarding outhouses.

(2) You must have enough rest rooms for each sex based on the maximum number of persons the camp is designed to house at any one time.

(3) You must provide separate rest rooms for each sex wherever rest rooms are in buildings shared by men and women.

((\*) (a) Distinctly mark the rooms "men" and "women" with:

((-) (i) Signs printed in English and in the native language of the persons occupying the camp; or

~~((OR~~

-) (ii) Easily understood pictures or symbols.

((\*) (b) If the facilities for each sex are in the same building, they must be separated by:

((-) (i) Solid walls; or

~~((OR~~

-) (ii) Partitions extending from the floor to the roof or ceiling.

(4) You must make sure:

((\*) (a) No one has to pass through a sleeping room to reach a rest room;

((\*) (b) Rest rooms have a window of at least six square feet opening directly to the outside, or are satisfactorily ventilated;

((\*) (c) All outside openings are screened with 16-mesh material;

((\*) (d) Fixtures, toilets, chemical toilets, or urinals are not located in a room used for other than toilet purposes;

((\*) (e) A rest room is within two hundred feet of the door of each sleeping room;

((\*) (f) Any outhouse is at least one hundred feet away from any sleeping room, dining room, lunch area, or kitchen.

(5) You must provide urinals as follows:

((\*) (a) One urinal or two linear feet of urinal trough for each twenty-five men;

((\*) (b) Construct the floor out of materials that are moisture proof, from the wall and out at least fifteen inches from the outer edge of the urinals;

((\*) (c) Have an adequate water flush in urinals when water under pressure is available;

((\*) (d) Urinal troughs in outhouses must:

((-) (i) Drain freely into the pit or vault; and

~~((AND~~

-) (ii) Have a drain constructed to exclude flies and rodents from the pit.

(6) You must install any new toilets in a rest room.

(7) You must make sure:

((\*) (a) There is an adequate supply of toilet paper for each rest room, outhouse, or chemical toilet;

((\*) (b) Toilet facilities are:

((-) (i) Kept in sanitary condition; and

~~((AND~~

-) (ii) Cleaned at least daily.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-30020 Follow local regulations for sewage disposal.** ~~((You must:))~~

~~(\*)~~ You must provide sewage disposal systems according to local health jurisdictions.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-400 Service facilities: Food preparation, dining, bathing, laundry and handwashing.**

~~((Summary:))~~

**Your responsibility:**

To provide facilities for your employees to cook, eat, do laundry, bathe, and wash their hands.

~~((You must:))~~

~~Provide service buildings for laundry, handwashing and bathing~~

~~WAC 296-833-40005~~

~~Provide cooking, food handling, and dining facilities~~

~~WAC 296-833-40010.))~~

| <u>You must meet the requirements...</u>                              | <u>in this section:</u>  |
|---|--------------------------|
| <u>Provide service buildings for laundry, handwashing and bathing</u> | <u>WAC 296-833-40005</u> |
| <u>Provide cooking, food-handling, and dining facilities</u>          | <u>WAC 296-833-40010</u> |

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-40005 Provide service buildings for laundry, handwashing and bathing.** ~~((You must:))~~ (1) You must make sure that every service building has equipment capable of maintaining a room temperature of at least seventy degrees Fahrenheit.

(2) You must make sure an adequate supply of hot and cold running water is provided for bathing and laundry purposes.

(3) You must provide:

((\*) (a) One handwash basin;

((-) (i) Per family shelter; or

~~((OR~~

-)) (ii) Per six persons in shared facilities;

((\*) (b) One shower head for every ten persons;

((\*) (c) One laundry tray or tub for every thirty persons;

((\*) (d) One "deepwell" type sink in each building used for laundry, handwashing, and bathing.

(4) You must make sure all:

((\*) (a) Laundry, handwashing and bathing room floors:

((-) (i) Are moisture-resistant and smooth but not slippery; and

((-) (ii) Have coved junctions of the curbing and the floor.

((\*) (b) Walls and partitions of shower rooms are smooth and moisture-resistant to the height where water splashes.

((\*) (c) Shower baths, shower rooms, or laundry rooms have floor drains to remove wastewater and facilitate cleaning.

(5) You must provide facilities for drying clothes.

(6) You must keep all service buildings clean.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-40010 Provide cooking, food-handling, and dining facilities.** ~~((You must:))~~ (1) You must make sure common cooking and dining areas are of adequate size and are separated from sleeping areas by a door.

(2) You must provide enclosed and screened cooking and food-handling facilities for all occupants. The facilities must include:

((\*) (a) A working cook stove or hot plate with at least one cooking surface for every two occupants;

((\*) (b) A sink with hot and cold running potable water under pressure;

((\*) (c) Food storage areas located off the floor;

((\*) (d) Nonabsorbent, easily cleanable food preparation counters;

((\*) (e) Mechanical refrigeration capable of maintaining a temperature of forty-five degrees Fahrenheit or below, with enough space to store perishable food items for all occupants;

((\*) (f) Fire-resistant, nonabsorbent, nonasbestos, and easily cleanable wall coverings close to cooking areas;

((\*) (g) Nonabsorbent, easily cleanable floors;

((\*) (h) At least one ceiling or wall light fixture;

((\*) (i) Lighting adequate for normal food preparation activities;

((\*) (j) Adequate ventilation for cooking facilities.

(3) You must make sure that dining halls:

((\*) (a) Meet the requirements of the department of health's rules in chapter 246-215 WAC, Food service;

((\*) (b) Have no direct openings to living or sleeping areas;

((\*) (c) Have fire-resistant, nonabsorbent, nonasbestos, and easy-to-clean wall coverings adjacent to cooking areas;

((\*) (d) Have nonabsorbent, easy-to-clean floors;

((\*) (e) Have at least one ceiling or wall light fixture;

((\*) (f) Have lighting adequate for normal dining activities.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-500 Waste disposal and pest control.**

~~((Summary:))~~

**Your responsibility:**

To make sure your temporary housing camps are kept sanitary.

~~((You must:~~

~~Follow proper waste disposal procedures~~

~~WAC 296-833-50005~~

~~Control insects, rodents, and other pests~~

~~WAC 296-833-50010.))~~

| <u>You must meet the requirements...</u>         | <u>in this section:</u>  |
|--|--------------------------|
| <u>Follow proper waste disposal procedures</u>   | <u>WAC 296-833-50005</u> |
| <u>Control insects, rodents, and other pests</u> | <u>WAC 296-833-50010</u> |

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-50005 Follow proper waste disposal procedures.** ~~((You must:~~

\*) (1) You must provide at least one garbage container for each family shelter. Garbage containers must be:

((-) (a) Placed on a wooden, metal, or concrete pad; and

~~((AND~~

-)) (b) Located within one hundred feet of each shelter.

((\*) (2) You must provide garbage containers that:

((-) (a) Are nonabsorbent;

((-) (b) Are cleanable **OR** only used once (for example, a disposable plastic liner);

((-) (c) Can be securely closed.

((\*) (3) You must make sure garbage containers are kept clean and emptied:

((-) (a) At least twice a week; and

~~((AND~~

-)) (b) When full.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-50010 Control insects, rodents, and other pests.** ~~((You must:~~

\*) (1) You must take steps to effectively prevent insects, rodents, and other pests from infesting camp areas.

((\*) (2) You must carry out a continuing and effective control program where pests have been detected.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-600 Employee first aid and communicable disease reporting.**

~~((Summary:))~~

**Your responsibility:**

To guard the general health of your employees by providing first-aid facilities and reporting communicable diseases.

~~((You must:~~

~~Provide first aid facilities~~

~~WAC 296-833-60005~~

~~Report communicable diseases~~

~~WAC 296-833-60010.))~~

| <u>You must meet the requirements...</u> | <u>in this section:</u>  |
|--|--------------------------|
| <u>Provide first-aid facilities</u>      | <u>WAC 296-833-60005</u> |
| <u>Report communicable diseases</u>      | <u>WAC 296-833-60010</u> |

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-60005 Provide first-aid facilities.**

~~((You must:~~

~~•)) (1) You must provide and maintain adequate first-aid facilities; and~~

~~((AND~~

~~•)) (2) You must make sure a person trained in first aid is in charge of the first-aid facilities.~~

**Reference:**

See WAC 296-800-150, First aid, in the core rules book for requirements for first-aid training and supplies.

AMENDATORY SECTION (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-60010 Report communicable diseases.**

~~((You must:~~

~~•)) You must immediately report to the local health officer:~~

~~((-) (1) The name and address of any individual in the camp known to or suspected of having a communicable disease listed in the department of health's list of notifiable conditions, chapter 246-101 WAC;~~

~~((-) (2) Any suspected food poisoning; and~~

~~((-) (3) Any unusual occurrence of:~~

~~((•) (a) Fever;~~

~~((•) (b) Diarrhea;~~

~~((•) (c) Sore throat;~~

~~((•) (d) Vomiting;~~

~~((•) (e) Jaundice.~~

NEW SECTION

**WAC 296-843-099 Definitions. Buddy system.**

A system of organizing employees into work groups so that each employee is assigned to observe another employee in the

same work group. The purpose of this system is to provide rapid assistance to employees in the event of an emergency.

**Clean-up operation.** An operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared up, or in any other manner processed or handled with the goal of making the site safer for people or the environment.

**Contamination reduction zone.** The buffer zone between the exclusion and the clean zone.

**Decontamination.** The removal of hazardous substances from employees and equipment, to the extent necessary, to avoid foreseeable adverse health effects.

**Emergency response or responding to emergencies.** An organized response to an anticipated release of a hazardous substance that is, or could become, an uncontrolled release.

**Exclusion zone.** A controlled area at a site, where contamination occurs, that is a risk to human health or the environment.

**Exposure or exposed.** Employee contact with a toxic substance, harmful physical agent, or oxygen deficient condition. Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

**Facility.** Any building structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft; or

Any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located (not including any boat, ship or barge).

**Hazardous materials team (HAZMAT team).** A group of employees who are expected to perform responses to releases, or possible releases, of hazardous substances for the purpose of control and stabilization. As a result of their duties, HAZMAT team members may have close contact with hazardous substances.

**Hazardous substance.** Any of the following substances that could adversely affect an exposed employee's health or safety:

(a) Substances defined under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or "Superfund" Act (found at <http://www.epa.gov>).

(b) Biological or other disease-causing agents released that could reasonably be expected to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in a person or their offspring when the person:

(i) Is directly exposed to the agent in the environment.

(ii) Directly ingests, inhales, or assimilates the agent from the environment.

(iii) Indirectly ingests the agent through a food chain.

(c) Substances listed by the United States Department of Transportation as hazardous materials under Title 49 (Transportation) in the Code of Federal Regulations (C.F.R.), Part 172, Section 101 and appendices (found at <http://www.nara.gov>, search for "List of C.F.R. subjects").

(d) Hazardous wastes as defined in this chapter.

**Hazardous waste.** Any substance designated by the department of ecology as a dangerous or extremely hazardous waste by chapter 173-303 WAC, Dangerous waste regulations.

**Hazardous waste site.** A hazardous waste site is any facility or location within the scope of this chapter.

**Health hazard.** Means a chemical or a pathogen where acute or chronic health effects may occur in exposed employees. It also includes stress due to temperature extremes. The term health hazard includes chemicals that are classified in accordance with the hazard communication standard, WAC 296-901-140, as posing one of the following hazardous effects: Acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); aspiration toxicity or simple asphyxiant. (See WAC 296-901-14022 Appendix A—Health hazard criteria, mandatory, for the criteria for determining whether a chemical is classified as a health hazard.)

**IDLH or immediately dangerous to life or health.** Any atmospheric condition that would:

- (a) Cause an immediate threat to life; or
- (b) Cause permanent or delayed adverse health effects;

or

- (c) Interfere with an employee's ability to escape.

**Incidental release.** A release that can be safely controlled at the time of the release and does not have the potential to become an uncontrolled release.

An example of a situation that results in an incidental release:

A tanker truck is receiving a load of hazardous liquid when a leak occurs. The driver knows the only hazard from the liquid is minor skin irritation. The employer has trained the driver on procedures and provided equipment to use for a release of this quantity. The driver puts on skin protection and stops the leak. A spill kit is used to contain, absorb, and pick up the spilled material for disposal.

**Oxygen deficiency.** An atmosphere where the percentage of oxygen by volume is less than 19.5%.

**Permissible exposure limit (PEL).** Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable DOSH rules.

**Postemergency response.** The stage of the emergency response where the immediate threat from the release has been stabilized or eliminated, and cleanup of the site has started. For more information, see the definition for "emergency response."

**Published exposure level.** Exposure limits published in "National Institute for Occupational Safety and Health (NIOSH) Recommendations for Occupational Safety and Health" (DHHS publication #92-100, 1992).

If an exposure limit is not published by NIOSH, then "published exposure level" means the exposure limits published by the American Conference of Governmental Industrial Hygienists (ACGIH) in "TLVs and BEIs-Threshold Limit Values for Chemical Substances and Physical Agents" (1999 edition).

**Safety data sheet (SDS).** Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous chemical, its hazards and protective measures as required by WAC 296-901-14014 Safety data sheets.

**Site safety and health supervisor (or official).** The individual present at a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to establish the site-specific health and safety plan and verify compliance with applicable safety and health requirements.

**Site work zones.** Zones established at a hazardous waste site before clean-up work begins to control work on the site and access to the site. The work zones are: Exclusion zone, contamination reduction zone, and clean zone.

**Uncontrolled hazardous waste site.** An area where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Examples include: Former municipal, county, or state landfills, locations where illegal or poorly managed waste disposal has taken place, or property of generators or former generators of hazardous substance waste (surface impoundments, landfills, dumps, and tank or drum farms).

**Uncontrolled release.** A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk:

- (a) Large-quantity releases.
- (b) Small releases that could be highly toxic.
- (c) Potentially contaminated individuals arriving at hospitals.
- (d) Airborne exposures that could exceed a DOSH permissible exposure limit or a published exposure limit and employees are not adequately trained or equipped to control the release.

Example of an uncontrolled release:

A forklift driver knocks over a container of a solvent-based liquid, releasing the contents onto the warehouse floor. The driver has been trained to recognize the vapor is flammable and moderately toxic when inhaled. The driver has not been trained or provided appropriate equipment to address this type of spill. In this situation, it is not safe for the driver to attempt a response. The driver needs to notify someone of the release so an emergency response can be initiated.

**AMENDATORY SECTION** (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-100 Scope.** This chapter applies if you have any of the following:

(\*) (1) Employees working in operations involving hazardous waste at a treatment, storage, and disposal (TSD) facility required to have a permit or interim status AND regulated by any of the following:

(-) (a) 40 C.F.R. Parts 264 and 265 under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq.;

((-)) (b) Agencies implementing RCRA through agreements with the United States Environmental Protection Agency (U.S.E.P.A.);

((-)) (c) Chapter 173-303 WAC, Dangerous waste regulations; (~~OR~~

•)) or

(2) Employees conducting initial investigations of government-identified sites before determining whether hazardous substances are present; (~~OR~~

•)) or

(3) Corrective actions, involving clean-up operations, at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 et seq.) or chapter 70.105 RCW, Hazardous waste management; (~~OR~~

•)) or

(4) Employees performing clean-up operations at an uncontrolled hazardous waste site. Sites include, but are not limited to:

((-)) (a) The Environmental Protection Agency's (EPA) National Priority Site List (NPL); see <http://www.epa.gov/superfund/sites/npl/wa.htm>;

((-)) (b) Sites recommended for inclusion on the EPA NPL;

((-)) (c) State priority site lists, for example those listed under chapter 173-340 WAC, Model Toxics Control Act (MTCA); see <http://www.ecy.wa.gov/programs/tcp/cscs/CSCSpag.HTML>;

((-)) (d) Unlisted sites recognized by a federal, state or local government as an uncontrolled hazardous waste site. Examples of such sites include:

((■)) (i) Sites that do not meet clean-up goals established by the MTCA and that pose a threat or potential threat to human health or the environment;

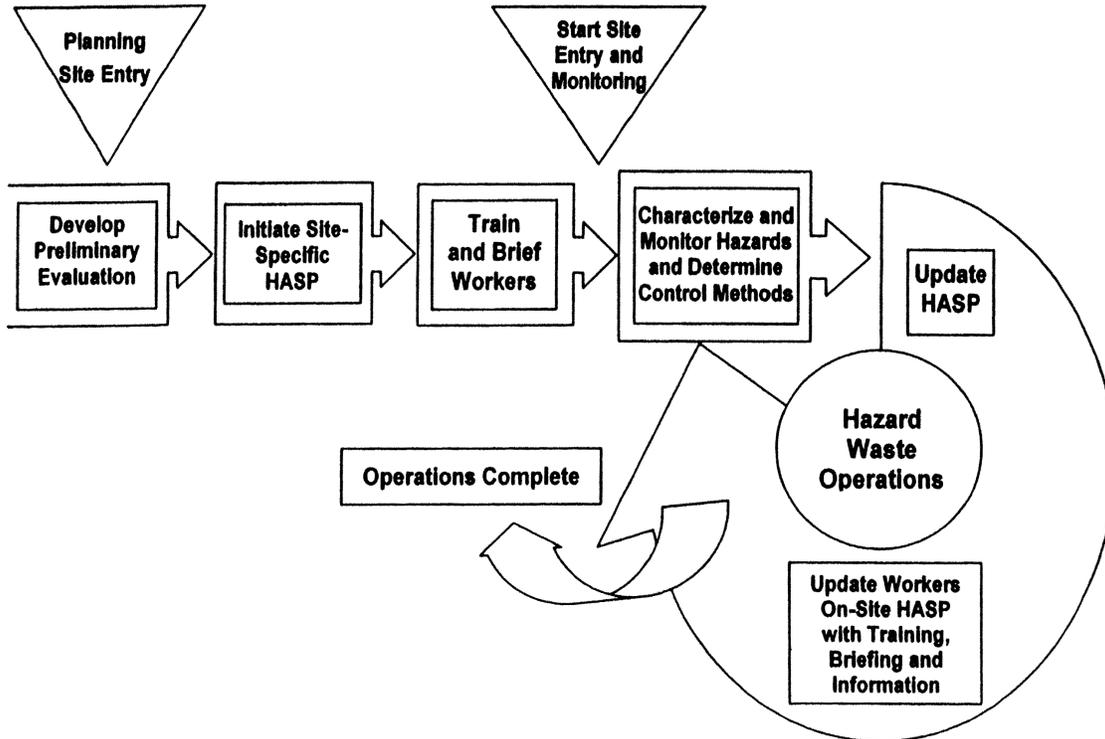
((■)) (ii) Clandestine drug lab sites designated for cleanup;

((-)) (e) Postemergency response cleanup at the site of a hazardous substance release regulated by chapter 296-824 WAC, Emergency response.

**IMPORTANT:**

This chapter applies to hazardous waste sites until cleanup at the site is determined to be complete by the governing regulatory agency.

**Site Evaluation Health & Safety Plan  
(HASP) Development Cycle**



**IMPORTANT: This diagram is to illustrate the general flow of the site. Please see the body of the regulation for details.**

Illustration 1

**Other rules that may apply to hazardous waste operations:**

You will find safety and health requirements (for example, personal protective equipment) are addressed in other rules and also in this chapter. If you find a conflict in requirements, you need to meet the more protective requirement. Contact your local L&I office if you need assistance in making this determination.

Examples of other rules that may apply:

(\*) 1. Chapter 296-800 WAC, Safety and health core rules:

(-) a. WAC 296-800-140(5) Accident prevention program;

(-) b. WAC 296-800-210(5) Lighting;

(-) c. WAC 296-800-230(5) Drinking water, bathrooms, washing facilities and waste disposal.

(\*) 2. Chapter 296-24 WAC, Safety standards for general safety.

(\*) 3. Chapter 296-833 WAC, Temporary housing for workers.

(\*) 4. Chapter 296-62 WAC, General occupational health.

(\*) 5. Chapter 296-155 WAC, Safety standards for construction work.

(\*) 6. Chapter 296-824 WAC, Emergency response.

(\*) 7. Chapter 296-841 WAC, Respiratory hazards.

(\*) 8. Chapter 296-842 WAC, Respirators.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-110 Evaluations and inspections.**

**Your responsibility:**

To conduct evaluations before entering the site and periodically throughout the hazardous waste operations.

~~((You must:~~

~~Complete a preliminary site evaluation before allowing employees to enter the site~~

~~WAC 296-843-11005.~~

~~Conduct ongoing evaluations of safety and health hazards~~

~~WAC 296-843-11010.))~~

| <u><b>You must meet the requirements ...</b></u>  | <u><b>in this section:</b></u> |
|---|--------------------------------|
| <u>Complete a preliminary site evaluation before allowing employees to enter the site</u> | <u>WAC 296-843-11005</u>       |
| <u>Conduct ongoing evaluations of safety and health hazards</u>                           | <u>WAC 296-843-11010</u>       |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-11005 Complete a preliminary site evaluation before allowing employees to enter the site.**

~~You must((~~

~~\*) complete a preliminary site evaluation by doing all the following:~~

|  |  |
|--|--|
| Collect or develop the following information to the extent available:          | <ul style="list-style-type: none"> <li>• The site location and approximate size</li> <li>• A description of the response activity and the job tasks to be performed</li> <li>• The time needed to cover all planned activities</li> <li>• The site's topography and all ways to access the site</li> <li>• The current status and capabilities of any emergency response team assisting during an emergency</li> <li>• The safety and health hazards expected at the site</li> <li>• The hazardous substances and health hazards at the site, including their chemical and physical properties</li> <li>• All hazardous substance dispersion pathways</li> <li>• An emergency response plan</li> </ul> |
| Have a qualified person evaluate the preliminary site information to identify: | <ul style="list-style-type: none"> <li>• Potential site hazards and risks</li> <li>• The most appropriate methods to protect employees</li> <li>• Conditions that have the potential to cause death or serious harm, including potential inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH)                             <ul style="list-style-type: none"> <li>- Examples include:                                     <ul style="list-style-type: none"> <li>■ Confined space entry</li> <li>■ Potentially explosive or flammable environments</li> <li>■ Visible vapor clouds</li> </ul> </li> </ul> </li> </ul>  |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>■ Areas where plants or animals have died</li> <li>• Risks related to specific on-site hazardous substances and health hazards                             <ul style="list-style-type: none"> <li>- Examples include:                                     <ul style="list-style-type: none"> <li>■ Exposures exceeding the permissible exposure limits (PELs) or published exposure levels</li> <li>■ IDLH concentrations</li> <li>■ Potential skin absorption and irritation sources</li> <li>■ Potential eye irritation sources</li> <li>■ Explosion sensitivity and flammability ranges</li> <li>■ Oxygen deficient atmospheres</li> </ul> </li> </ul> </li> </ul> |
| Have a qualified person prepare an initial site characterization and analysis for the site to: | <ul style="list-style-type: none"> <li>• Identify known and suspected health and safety hazards for the site</li> <li>• Aid in selecting control methods to protect employees from site hazards</li> <li>• Brief employees on site conditions before any work starts</li> <li>• Initiate the site-specific health and safety plan (HASP)</li> </ul>  |

**Note:** Characterization and analysis of site hazards is an ongoing process for work on the hazardous waste site.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-11010 Conduct ongoing evaluations of safety and health hazards.** ~~((You must:))~~ (1) You must have a qualified person complete further evaluation of health and safety hazards at the site immediately after initial entry to:

~~((~~

~~((~~

~~((~~

~~((~~

**Note:** For more information, see WAC 296-843-170((g)) Hazard controls, and WAC 296-843-190((g)) Personal protective equipment.

~~((You must:))~~

(2) You must make sure your site safety and health supervisor or another qualified person performs periodic inspections to:

~~((~~

~~((~~

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-120 Health and safety plan (HASP).**

**Your responsibility:**

To establish a written health and safety plan (HASP).

~~((You must:~~

~~Develop and maintain a written site-specific health and safety plan (HASP)~~

~~WAC 296-843-12005-)~~

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Develop and maintain a written site-specific health and safety plan (HASP)</u> | <u>WAC 296-843-12005</u> |

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

**WAC 296-843-12005 Develop and maintain a written site-specific health and safety plan (HASP).**

**Reference:** If your overall program required under WAC 296-800-140(3) Accident prevention program (APP), meets requirements of this chapter, you do not need to duplicate those portions of your APP in the site-specific health and safety plan (HASP).

~~((You must:~~

•) (1) You must develop a written HASP for each hazardous waste site, **BEFORE** beginning hazardous waste operations, that includes at least the following:

**(a) Hazard analysis:**

(-) (i) Identification and evaluation of on-site safety and health hazards.

(-) (ii) A safety and health risk (hazard) analysis for each site task and operation that is identified in the comprehensive work plan.

**(b) Organization chart:**

(-) An organizational structure that reflects current site operations, including the following:

(■) (i) Establish and identify the chain of command.

(■) (ii) Identify the site safety and health supervisor and other personnel responsible for employee safety and health.

(■) (iii) Specify the overall responsibilities of supervisors and employees.

(■) (iv) Include the name and title of the person with responsibility and authority to direct all hazardous waste operations.

(■) (v) Include a site safety and health supervisor responsible for developing and implementing the HASP and verifying compliance.

(■) (vi) Identify the functions and responsibilities of all personnel needed for hazardous waste operations and emergency response.

(■) (vii) Identify site specific lines of authority, responsibility, and communication.

**(c) Comprehensive work plan:**

(-) A written comprehensive work plan of tasks, objectives, logistics, and resources for site operations, including the following:

(■) (i) Addresses anticipated clean-up activities and normal operating procedures unless that information is already available in another document.

(■) (ii) Defines work tasks and objectives.

(■) (iii) Describes how the work tasks and objectives will be accomplished.

(■) (iv) Establishes the personnel requirements to implement the work plan.

(■) (v) Provides for implementation of training, briefings, and information as required by WAC 296-843-200.

**(d) Site control plan:**

(-) An up-to-date site control plan before clean-up operations begin to minimize employee exposure to hazardous substances and including the following (unless it's available in another document):

(■) (i) A site map.

(■) (ii) Establish site work zones.

(■) (iii) How the "buddy system" is used.

(■) (iv) The site communications plan, including how employees are alerted during emergencies.

(■) (v) The site's standard operating procedures (SOPs) or safe work practices.

(■) (vi) Identification of the nearest medical assistance.

**(e) Personal protective equipment:**

(-) A PPE plan that addresses all of the following:

(■) (i) Site hazards and activities.

(■) (ii) Methods to evaluate the effectiveness of the PPE plan.

(■) (iii) Criteria for selecting and fitting PPE, including work duration, use limitations of particular PPE, and medical considerations such as temperature extremes and heat stress.

(■) (iv) Training on PPE use.

(■) (v) Procedures for putting on and taking off PPE.

(■) (vi) PPE inspection procedures prior to, during, and after use.

(■) (vii) Decontamination and disposal of PPE.

(■) (viii) Maintenance and storage of PPE.

**(f) Additional elements:**

(-) (i) A sampling and monitoring plan (see WAC 296-843-130) that includes sampling of drums and containers.

(-) (ii) Site control measures (see WAC 296-843-140).

(-) (iii) Decontamination procedures (see WAC 296-843-150).

(-) (iv) Spill containment plans (see WAC 296-843-180(3)) Drum and container handling).

(-) (v) Standard operating procedures for sampling, managing, and handling drums and containers (see WAC 296-843-180).

(-) (vi) Entry procedures for tanks or vaults (see chapter 296-809 WAC, Confined spaces).

(-) (vii) A training, briefings, and information plan (see WAC 296-843-200).

(-) (viii) A medical surveillance plan (see WAC 296-843-210), that includes site-specific medical surveillance requirements.

(-) (ix) Sanitation (see WAC 296-155-140).

(-) (x) Lighting (see WAC 296-800-210).

(-) (xi) Excavations (see chapter 296-155 WAC, Part N, Excavation, trenching and shoring).

(-) (xii) Any relationship or interaction between other programs and the site-specific program.

**Note:** The emergency response plan required by WAC 296-843-160(3) Emergency response for hazardous waste sites, is also included as a separate section in the HASP.

~~((You must:~~

•) (2) You must keep a copy of your HASP on site.

**Reference:** For more information, see WAC 296-843-220(3) Recordkeeping and information access.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-130 Sampling and monitoring.**

**Your responsibility:**

To conduct monitoring for health and safety hazards to protect employees.

~~((You must:~~

~~Conduct monitoring for health and safety hazards during initial site entry~~

~~WAC 296-843-13005.~~

~~Evaluate employee exposure to hazardous substances during clean-up operations~~

~~WAC 296-843-13010.)~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Conduct monitoring for health and safety hazards during initial site entry</u>    | <u>WAC 296-843-13005</u> |
| <u>Evaluate employee exposure to hazardous substances during clean-up operations</u> | <u>WAC 296-843-13010</u> |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-13005 Conduct monitoring for health and safety hazards during initial site entry.** ~~((You must:~~

~~\*) (1) You must make visual observations of the site to detect signs of actual or potential immediately dangerous to life or health (IDLH) or other dangerous conditions.~~

~~((\*) (2) You must conduct representative air monitoring with direct reading test equipment, when the preliminary site evaluation does not eliminate the potential for ionizing radiation or IDLH conditions.~~

~~((\*) (3) You must assess the following:~~

~~((-) (a) Potential IDLH conditions.~~

~~((-) (b) Exposure over radioactive material dose limits.~~

~~((-) (c) Potential exposure over permissible exposure limits (PELs) or other published exposure levels.~~

~~((-) (d) Other dangerous conditions, such as the presence of flammable or oxygen-deficient atmospheres.~~

**Reference:** See WAC 296-62-09004(3) Ionizing radiation, for additional information about radioactive material dose limits.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-13010 Evaluate employee exposure to hazardous substances during clean-up operations.**

**IMPORTANT:**

The clean-up operation begins when soil, surface water, or containers are moved or disturbed.

~~((You must:~~

~~\*) (1) You must identify the type of personnel monitoring and environmental sampling you plan to use, including instrumentation.~~

~~((\*) (2) You must include requirements for maintaining and calibrating the monitoring and sampling instruments used.~~

~~((\*) (3) You must monitor whenever employees may be exposed to concentrations exceeding PELs or other published exposure levels.~~

~~((\*) (4) You must evaluate employees who are likely to have the highest exposure:~~

~~((-) (a) Monitor all employees who are likely to have the highest exposure to hazardous substances or health hazards above the PEL or published exposure limit.~~

~~((-) (b) Use personal sampling frequently enough to characterize the exposures of these employees.~~

~~((\*) (c) When results indicate exposure is over the PEL or other published exposure level, identify all employees likely to be above the PEL or published exposure limit.~~

**Note:** You may use a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are representative of both:

~~((\*) 1. Employee exposure to hazardous substances; and~~

~~((AND))~~

~~((\*) 2. Employees not sampled.~~

~~((You must:~~

~~\*) (5) You must conduct monitoring when the possibility of one of the following exists:~~

~~((-) (a) An atmosphere that is immediately dangerous to life or health (IDLH); ((OR~~

~~-) or~~

~~(b) A flammable atmosphere; ((OR~~

~~-) or~~

~~(c) Employee exposures exceeding PELs or other published exposure levels. Examples of situations where these possibilities may exist:~~

~~((\*) (i) Work begins on a different portion of the site.~~

~~((\*) (ii) Contaminants other than those previously monitored are being handled.~~

~~((\*) (iii) A different type of site operation starts, such as moving from drum opening to exploratory well drilling.~~

~~((\*) (iv) Handling leaking drums or containers.~~

~~((\*) (v) Working in areas with obvious liquid contamination such as a spill or lagoon.~~

~~((\*) (vi) Time has passed and employee exposure levels may have significantly increased.~~

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-140 Site control.**

**Your responsibility:**

To establish a plan to control access to the site.

~~((You must:~~

~~Establish a site control plan~~

~~WAC 296-843-14005.)~~

| <u>You must meet the requirements ...</u> | <u>in this section:</u>  |
|---|--------------------------|
| <u>Establish a site control plan</u>      | <u>WAC 296-843-14005</u> |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-14005 Establish site control.** (~~You must:~~

•) (1) You must maintain site work zones and site control as required by Table 1, Site Work Zone Requirements.

((•) (2) You must control access to the exclusion and contamination reduction zones.

((•) (3) You must make sure people wear personal protective equipment (PPE) appropriate to their work zone.

**Table 1**  
**Site Work Zone Requirements**

| <b>For this type of work zone:</b>                                   | <b>You must:</b>  |
|--|---|
| Exclusion zone   | <ul style="list-style-type: none"> <li>• Establish entry and exit check-points on the zone's boundary</li> <li>• Regulate the flow of people and equipment into and out of the zone</li> <li>• Make sure exits go through a contamination reduction corridor</li> </ul>   |
| Contamination reduction zone with a contamination reduction corridor | <ul style="list-style-type: none"> <li>• Enter through a control point from the clean zone</li> <li>• Provide a transition or buffer between the exclusion zone and the clean zone</li> <li>• Perform all decontamination procedures</li> <li>• Establish separate decontamination routes for people and equipment, if practical</li> <li>• Remove all PPE worn in the contamination reduction or exclusion zones before entering the clean zone</li> </ul> |
| Clean zone or support zone   | Have no employee exposure to hazardous substances or health hazards   |

**Note:** See Illustration 2 for an example of site work zones.

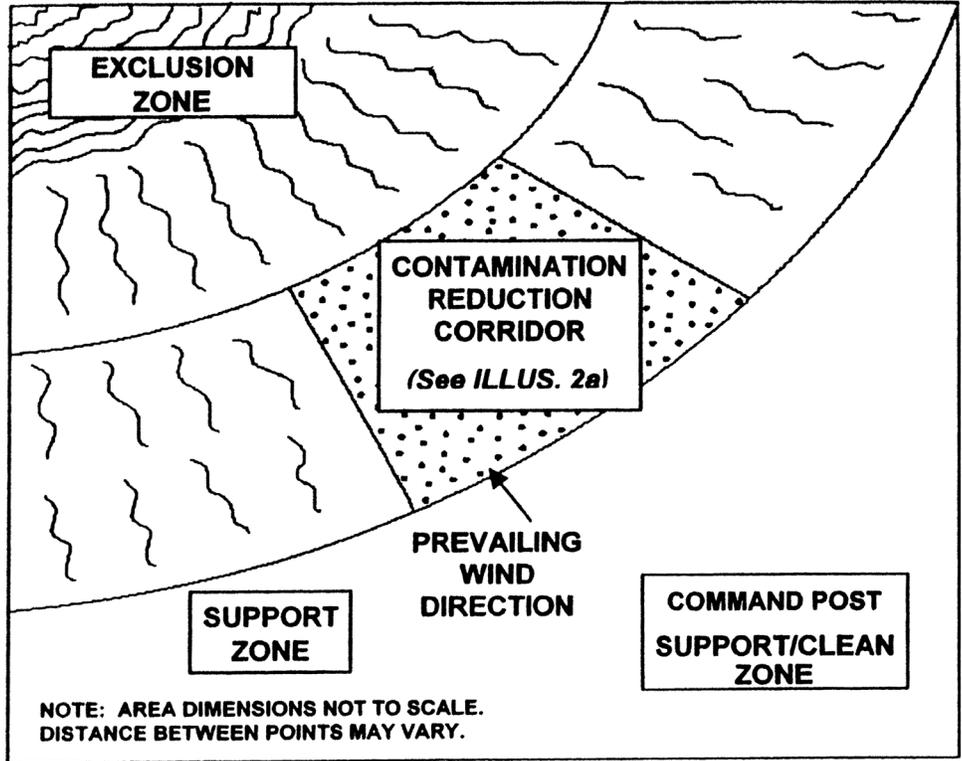


Illustration 2 - Site Work Zones

To make sure the necessary facilities and equipment for effective decontamination are available and used.

~~(You must:~~

~~Establish and implement decontamination procedures before any worker or equipment enters a contaminated area~~

~~WAC 296-843-15005.~~

~~Provide showers and changing rooms~~

~~WAC 296-843-15010.~~

~~Provide washing facilities~~

~~WAC 296-843-15015.))~~

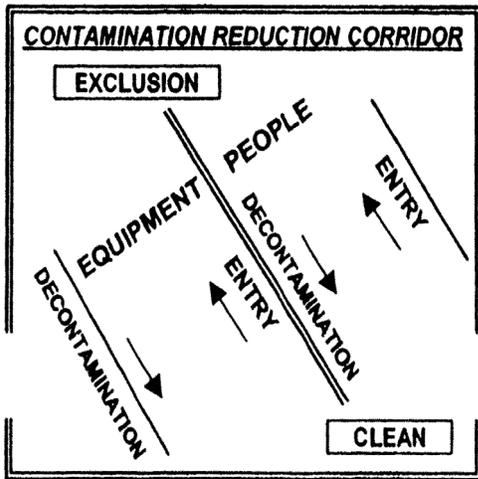


Illustration 2a - Contamination Reduction Corridor

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Establish and implement decontamination procedures before any worker or equipment enters a contaminated area</u> | <u>WAC 296-843-15005</u> |
| <u>Provide showers and changing rooms</u>   | <u>WAC 296-843-15010</u> |
| <u>Provide washing facilities</u>   | <u>WAC 296-843-15015</u> |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-150 Worker and equipment decontamination.**

**Your responsibility:**

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-15005 Establish and implement decontamination procedures before any worker or equipment enters a contaminated area. (~~You must:~~**

\*) You must establish, implement, and communicate decontamination procedures to all workers, to include the following:

- ((-)) (1) Standard operating procedures to minimize worker contact with:
  - ((■)) (a) Hazardous substances.
  - ((■)) (b) Contaminated equipment.
- ((-)) (2) Decontaminating all:
  - ((■)) (a) Workers leaving a contaminated area.
  - ((■)) (b) Equipment leaving a contaminated area.
- ((-)) (3) Decontaminating, cleaning, laundering, repairing, or replacing protective clothing or equipment (PPE) as needed to maintain effectiveness.
- ((-)) (4) Immediate removal of clothing, such as cotton coveralls, wet with hazardous substances and use of the nearest shower.
- ((■)) Decontaminate or dispose of clothing before removal from the work zone.
- ((-)) (5) Periodically monitoring procedures for effectiveness by the site safety and health supervisor.
- ((-)) (6) Correct your procedures when found ineffective.
- ((-)) (7) Establish decontamination areas to minimize contact of contaminated employees and equipment with uncontaminated employees or equipment.
- ((-)) (8) Make sure only authorized employees remove protective clothing or equipment from changing rooms.
- ((-)) (9) Inform commercial laundries or cleaning establishments about the potentially harmful effects from exposure to hazardous substances.
- ((-)) (10) Properly decontaminate or dispose of decontamination equipment and solvents.

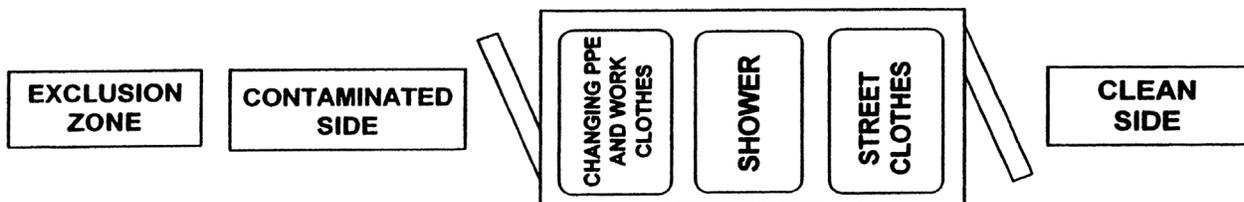
AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-15010 Provide showers and changing rooms.** ~~((You must:~~

- \*) (1) You must provide changing areas and showers outside a contaminated area, when needed for worker decontamination, that include at least the following:
  - ((-)) (a) Separate changing areas:
    - ((■)) (i) One to provide a clean area where employees can remove, store, and put on street clothing with an exit leading off the work site.
    - ((■)) (ii) Another where employees can put on, remove, store, and dispose of work clothing and PPE with an exit leading to the work site.
  - ((-)) (b) A shower area separating the changing areas.
- ((\*) (2) You must prevent clean areas from being contaminated by hazardous substances.
- ((\*) (3) You must provide and use other effective means for worker cleansing, if temperature conditions prevent the effective use of water.
- ((\*) (4) You must locate showers and change rooms where worker exposures are below permissible exposure limits (PELs) or other published exposure levels.
- ((-)) If this cannot be accomplished, use a ventilation system to supply air that is below the PELs or published exposure levels.
- ((\*) (5) You must make sure all workers shower at the end of their work shift or before they leave the site, when needed for worker decontamination.

Illustration 3 is a sample diagram of a change room layout.

**Change Room Layout**



**Illustration 3**

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-15015 Provide washing facilities.** ~~((You must:~~

- \*) You must provide adequate washing facilities to employees working in hazardous waste operations that are:
  - ((-)) (1) Close and convenient to the work area.
  - ((-)) (2) Located in areas where employee exposure is below PELs or other published exposure levels.
  - ((-)) (3) Equipped so an employee can remove hazardous substances from themselves without assistance.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-160 Emergency response for hazardous waste sites.**

**Your responsibility:**

To establish an emergency response plan for emergencies at the hazardous waste site.

~~((You must:~~

~~Establish an emergency response plan for anticipated emergencies before beginning hazardous waste operations~~

~~WAC 296-843-16005.))~~

| <u>You must meet the requirements ...</u>   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Establish an emergency response plan for anticipated emergencies before beginning hazardous waste operations</u> | <u>WAC 296-843-16005</u> |

**AMENDATORY SECTION** (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-16005 Establish an emergency response plan for anticipated emergencies before beginning hazardous waste operations.**

**Exemption:** Employers are exempt from preparing an emergency response plan if they do ALL of the following:

- ((\*) 1. Evacuate all employees from the danger area during an emergency.
- ((\*) 2. Prohibit employees from assisting in the emergency response.
- ((\*) 3. Prepare an emergency action plan that complies with WAC 296-24-567(1)(c) evacuation plan.

**IMPORTANT:**

Treatment, storage, and disposal (TSD) employers are not required to duplicate subjects fully addressed in the contingency plan required by permits when the contingency plan is part of their emergency response plan. Examples of permits would be those issued by the department of ecology.

~~((You must:))~~

(1) You must establish and maintain the plan to reflect current site conditions, information, and personnel:

((\*) (a) Include policies or procedures for at least the following:

- ((-) (i) Preemergency planning.
- ((-) (ii) Coordination with outside organizations.
- ((-) (iii) Current site topography, layout, and weather conditions.
- ((-) (iv) Personnel roles.
- ((-) (v) Lines of authority.
- ((-) (vi) Communication.
- ((-) (vii) Reporting incidents to local, state, and federal government agencies.
- ((-) (viii) Emergency recognition and prevention.
- ((-) (ix) Safe distances and places of refuge.
- ((-) (x) Site security and control.
- ((-) (xi) Evacuation routes.
- ((-) (xii) Decontamination not covered by the site-specific HASP.
- ((-) (xiii) Emergency medical treatment and first aid.
- ((-) (xiv) Emergency alert and response.
- ((-) (xv) Personal protective equipment and emergency equipment.
- ((-) (xvi) Employee training.
- ((-) (xvii) Critique of the response effort and appropriate followup.

((\*) (b) Use available information at the time of the emergency to:

((-) (i) Evaluate the incident and site response capabilities.

((-) (ii) Proceed with appropriate steps to implement your emergency response plan.

((\*) (c) Make sure the emergency response plan is:

((-) (i) Kept as a separate section of your site-specific health and safety plan (HASP); ~~((AND~~

~~-)) and~~

(ii) Integrated and compatible with, local, state, and federal plans for disasters, fires, and emergency responses.

(2) You must establish an alarm system to alert employees to ~~((all of the following:~~

•) an on-site emergency incident:

((-) (a) To stop work activities, if necessary.

((-) (b) To lower background noise to assist communication.

((-) (c) To begin emergency procedures.

(3) You must rehearse the plan as part of site operations training.

**AMENDATORY SECTION** (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-170 Employee exposure controls.**

**Your responsibility:**

Implement feasible controls to protect employees from exposure to site hazards.

~~((You must:~~

~~Control employee exposure to site health and safety hazards~~

~~WAC 296-843-17005-))~~

| <u>You must meet the requirements ...</u>                          | <u>in this section:</u>  |
|--|--------------------------|
| <u>Control employee exposure to site health and safety hazards</u> | <u>WAC 296-843-17005</u> |

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-843-17005 Control employee exposure to site health and safety hazards. ~~((You must:~~**

•) (1) You must use feasible controls, selected based on monitoring and other available information, to protect employee exposure above permissible exposure limits (PELs) or other published exposure levels.

((-) Examples of controls include:

((\*) (a) Installing pressurized cabs or control booths on equipment.

((\*) (b) Using remotely operated material handling equipment.

((\*) (c) Removing all nonessential employees when opening drums.

((\*) (d) Wetting down dusty operations.

((\*) (e) Positioning employees upwind of possible hazards.

((\*) (2) You must evaluate new technologies and other control measures before using them on a large scale.

((\*) (3) You must use any reasonable combination of controls and personal protective equipment (PPE) to reduce

and maintain employee exposure at or below the PELs, published exposure levels, or dose levels when controls are not:

((-)) (a) Feasible; ~~((OR~~  
~~-)) or~~

(b) Effective.

~~((\*) (4) You must make~~ sure PPE is NOT used as a replacement control.

((-)) PPE should be used only as a supplement to controls.

**Note:** For those hazardous substances without PELs or published exposure levels, use other published literature and safety data sheets (SDSs) to help decide what level of protection is appropriate. For more information about SDSs, see WAC 296-901-14014((;)) Safety ~~((date))~~ data sheets.

~~((You must:~~

~~\*) (5) You must use~~ employee rotation to reduce exposure below ionizing radiation PELs or dose limits, when that is the **only** feasible means of protecting employees.

**AMENDATORY SECTION** (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-180 Drum and container handling.**

**Your responsibility:**

To handle drums and containers in ways that minimize the hazard to employees.

~~((You must:~~

~~Handle drums and containers safely~~

~~WAC 296-843-18005.~~

~~Handle drums and containers suspected of containing shock-sensitive (explosive) wastes safely~~

~~WAC 296-843-18010.~~

~~Maintain worker safety in drum and container opening areas~~

~~WAC 296-843-18015.~~

~~Ship and transport drums and containers safely~~

~~WAC 296-843-18020.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Handle drums and containers safely</u>  | <u>WAC 296-843-18005</u> |
| <u>Handle drums and containers suspected of containing shock-sensitive (explosive) wastes safely</u> | <u>WAC 296-843-18010</u> |
| <u>Maintain worker safety in drum and container opening areas</u>                                    | <u>WAC 296-843-18015</u> |
| <u>Ship and transport drums and containers safely</u>  | <u>WAC 296-843-18020</u> |

**IMPORTANT:**

((\*) 1. Containers or drums containing shock-sensitive (explosive) or potentially shock-sensitive wastes require special handling precautions.

((\*) 2. Handle, transport, label, and dispose of drums and containers according to this chapter and other United

States Department of Transportation (DOT), ~~((WISHA))~~ Washington department of labor and industries' DOSH, EPA, and Washington department of ecology regulations for:

((-) a. Drums.

((-) b. Containers.

((-) c. Hazardous substances.

((-) d. Contaminated soils.

((-) e. Liquids, and other residues.

**AMENDATORY SECTION** (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-18005 Handle drums and containers safely.**

**Preparation for moving drums and containers:**

~~((You must:~~

~~\*) (1) You must assess~~ hazards to employees, such as radioactive waste, before handling drums and containers.

((\*) (2) You must consider unlabeled drums and containers to contain hazardous substances and handle them accordingly, until the contents are positively identified, labeled, and assessed for hazards.

((\*) (3) You must inspect and make sure drums and containers are sound before moving them.

((-) If it is not practical to inspect drums without moving them, move drums and containers to an accessible location and inspect prior to further handling.

((\*) (4) You must remove soil or other materials covering drums or containers with caution to prevent rupture.

((\*) (5) You must use ground-penetrating systems or other types of detection systems or devices to estimate the location and depth of buried drums or containers.

((\*) (6) You must use the sampling plan and procedures included in the site-specific HASP to sample the contents of containers and drums.

**Moving drums and containers:**

~~((You must:~~

~~\*) (7) You must warn~~ all employees exposed to drum movement operations about the potential hazards associated with the contents of the drums or containers prior to moving them.

((\*) (8) You must minimize movement of drums or containers.

((\*) (9) You must select, position, and operate tools and material handling equipment to prevent the ignition of flammable vapors.

((\*) (10) You must handle tanks and vaults containing hazardous substances with the same precautions as for drums and containers, taking into account the size of tank or vault.

**Handling spills and leaks:**

~~((You must:~~

~~\*) (11) You must contain~~ and isolate the entire volume of a hazardous substance in a drum or container when a spill occurs.

((\*) (12) You must have available and use both of the following in areas where spills, leaks, or ruptures may occur:

((-) (a) United States Department of Transportation (DOT) specified salvage drums or containers.

((-) (b) Suitable quantities of proper absorbent materials.

((\*) (13) You must empty drums and containers, that cannot be moved without rupturing, leaking, or spilling, into a sound container.

((-) Use a pump or other device classified for the material being transferred.

((\*) (14) You must have fire-extinguishing equipment on-hand to control fires in their initial stage.

Reference: For further information, see the safety and health core rules, WAC 296-800-300((-)) Portable fire extinguishers.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-18010 Handle drums and containers suspected of containing shock-sensitive (explosive) wastes safely. ((You must:

\*) (1) You must allow only essential employees in the transfer area.

((\*) (2) You must communicate as follows:

((-) (a) Signal the beginning and end of shock-sensitive (explosive) waste handling activities with an alarm system that is capable of being perceived above background light and noise.

((-) (b) Maintain continuous communications throughout the ((handling)) handling operation:

((\*) (i) Between the employee-in-charge of the immediate handling area AND the site safety and health supervisor AND the command post.

((\*) (ii) Using portable radios, hand signals, or telephones, as appropriate.

((-) (c) Prevent the use of communication equipment or methods that could cause shock-sensitive (explosive) materials to explode.

((\*) (3) You must provide material handling equipment with explosive containment devices or shields to protect equipment operators from exploding containers.

((-Dø)) (4) You must not move bulging or swollen drums or containers until the cause for excess pressure is determined and you can move the drum or container safely.

((\*) (5) You must consider packaged laboratory wastes or laboratory waste packs shock-sensitive or explosive until the contents have been characterized.

((-) Make sure laboratory waste packs are opened only((:

\*) when necessary((-

\*) and by a person knowledgeable in the inspection, classification, and segregation of the containers within the pack.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-18015 Maintain worker safety in drum and container opening areas. ((You must:

\*) (1) You must keep employees who are not involved in opening drums or containers a safe distance from the opening area.

((\*) (2) You must use appropriate shielding between the employee and the drums or containers, when excess interior pressure cannot be relieved from a remote location.

((\*) (3) You must provide an explosion-resistant barrier that does not interfere with the work to protect employees working near or adjacent to drum or container opening operations from accidental explosions.

((\*) (4) You must position controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment behind the explosion-resistant barrier. Prohibit employees from standing on or working from drums or containers.

Reference: The shipment of shock-sensitive (explosive) waste may be prohibited under United States Department of Transportation (DOT) regulations. You and your shipper should refer to title 49 C.F.R.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-18020 Ship and transport drums and containers safely. ((You must:)) (1) You must identify and classify drum and container contents prior to packaging for shipment.

(2) You must provide staging areas:

((\*) (a) Each staging area must have adequate entry and exit routes.

((\*) (b) The number of drum or container staging areas must be kept to the minimum needed to identify and classify materials safely and prepare them for transport.

(3) You must permit bulking of hazardous wastes only after a thorough characterization of the wastes has been completed.

Note: Handle, transport, label, and dispose of drums and containers according to this chapter and other United States Department of Transportation (DOT), ((WISHA)) DOSH, EPA, and Washington department of ecology regulations for:

- ((\*) 1. Drums.
((\*) 2. Containers.
((\*) 3. Hazardous substances.
((\*) 4. Contaminated soils.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-190 Personal protective equipment (PPE).

Your responsibility:

To use PPE to protect employees when feasible controls do not remove the hazardous exposure.

((You must:

Provide and use appropriate PPE

WAC 296-843-19005.))

Table with 2 columns: 'You must meet the requirements ...' and 'in this section:'. Row 1: 'Provide and use appropriate PPE' and 'WAC 296-843-19005'.

**Reference:** For additional information about developing a PPE plan, see the PPE user guide found at (<http://www.lni.wa.gov/wisha/publications/PPEGuide/PPEload.htm>) (<http://www.lni.wa.gov/wisha/publications/PPEGuide/PPEload>).

**Note:** The manufacturer's information on PPE may be used to meet your PPE plan requirements. For example, the manufacturer's procedures for putting on and taking off PPE may be attached to the site-specific health and safety plan (HASP).

**AMENDATORY SECTION** (Amending WSR 09-05-071, filed 2/17/09, effective 4/1/09)

**WAC 296-843-19005 Provide and use appropriate PPE.**

**Reference:** See WAC 296-843-110(3) Evaluations and inspections, found in this chapter, for more information about how to identify hazards and complete your preliminary site evaluation.

~~((You must:))~~

(1) You must make sure the PPE you provide and use for initial entry protects employees from known or suspected safety and health hazards identified during the preliminary site evaluation as follows:

| If   | Then   |
|--|--|
| The need for atmosphere supplying respirators and chemical protective clothing has NOT been eliminated | Provide atmosphere supplying respirators and protective clothing   |
| Employees use respiratory protection other than a positive-pressure SCBA for initial entry             | Include an escape self-contained breathing apparatus (SCBA) with enough air to reach a safe location and always at least five minutes of air |

((\*) Use Table 2, Selecting PPE in Various Exposure Situations, to determine the level of PPE to provide during initial entry(~~(:~~

~~You must:~~

(2) You must make sure the PPE you select provides employee protection based on:

((\*) (a) Actual and potential hazards identified during the site characterization and analysis (see WAC 296-843-110(3) Evaluations and inspections).

((\*) (b) Hazards likely to be encountered.

((\*) (c) Required tasks and their duration.

((\*) (d) Site requirements and limitations.

((\*) (e) Use Table 2 to identify the type of PPE that is required for various exposure situations.

**Table 2  
Selecting PPE in Various Exposure Situations**

| If   | Then  |
|--|---|
| Changing site conditions indicate a change in employee exposure  | Review and adjust the level of protection as appropriate<br><br><b>Note:</b><br>You may decrease the level of protection when information indicates this will not increase employee exposure to safety or health hazards  |
| There is a substantial possibility that skin absorption or contact with a hazardous substance may: <ul style="list-style-type: none"> <li>Impair an employee's ability to escape</li> <li>Cause immediate serious illness or injury</li> <li>Is an IDLH or immediate death hazard</li> </ul> | Use totally encapsulating chemical protective (TECP) suits and make sure they will protect employees from the hazards <ul style="list-style-type: none"> <li>Use, decontaminate, inspect, and remove TECP suits from service according to the manufacturer's recommendations</li> <li>Perform any TECP integrity tests recommended by the manufacturer and make sure all TECP suits are capable of:                             <ul style="list-style-type: none"> <li>Maintaining positive air pressure</li> <li>Preventing inward test gas leakage of more than 0.5%</li> </ul> </li> </ul> <b>Note:</b><br>Follow the manufacturer's recommended procedures for testing a TECP suit's ability to maintain positive air pressure and prevent inward gas leakage. Other established test protocols for these suits, for example, NFPA 1991 and ASTM F1052-97, may also be used |
| There is a substantial possibility that employee exposure to hazardous substances will either: <ul style="list-style-type: none"> <li>Immediately cause death, serious illness, or serious injury</li> </ul> OR  | Use a positive-pressure SCBA or an airline respirator with an escape SCBA <ul style="list-style-type: none"> <li>Protect air supply from contamination and the entire respirator system from physical damage</li> </ul>   |

| If   | Then |
|--|------|
| <ul style="list-style-type: none"> <li>Impair an employee's ability to escape</li> </ul> |      |

**Note:** If there is not a permissible exposure limit (PEL) or other published exposure level for a hazardous substance, you may use published studies and information as a guide for selecting appropriate PPE.

(3) PPE required by this standard (~~(is to)~~) must be provided at no cost to the employees.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-200 Training, briefings, and information.**

**Your responsibility:**

To make sure employees and subcontractors have the training and information needed to work safely.

~~((You must:~~

~~Inform workers and employers about the hazardous waste site~~

~~WAC 296-843-20005.~~

~~Train workers, supervisors and managers before work begins on the site~~

~~WAC 296-843-20010.~~

~~Provide additional training to your managers and supervisors~~

~~WAC 296-843-20015.~~

~~Training for postemergency response~~

~~WAC 296-843-20020.~~

~~Make sure your employees receive written documentation of training~~

~~WAC 296-843-20025.~~

~~Provide refresher training to employees~~

~~WAC 296-843-20030.~~

~~Use qualified trainers~~

~~WAC 296-843-20035.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Inform workers, contractors and subcontractors about the hazardous waste site</u> | <u>WAC 296-843-20005</u> |
| <u>Train workers, supervisors and managers before work begins on the site</u>        | <u>WAC 296-843-20010</u> |
| <u>Provide additional training to your managers and supervisors</u>                  | <u>WAC 296-843-20015</u> |
| <u>Training for postemergency response</u>   | <u>WAC 296-843-20020</u> |
| <u>Make sure your employees receive written documentation of training</u>            | <u>WAC 296-843-20025</u> |

| <u>You must meet the requirements ...</u>      | <u>in this section:</u>  |
|--|--------------------------|
| <u>Provide refresher training to employees</u> | <u>WAC 296-843-20030</u> |
| <u>Use qualified trainers</u>                  | <u>WAC 296-843-20035</u> |

**IMPORTANT:**

If law enforcement personnel participate in clean-up activities, they must receive appropriate hazardous waste clean-up training as described in this chapter.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20005 Inform workers, contractors and subcontractors about the hazardous waste site. (~~You must:~~**

**•) (1) You must** inform employees, contractors, and subcontractors or their representatives, about:

(-) (a) The nature, level, and degree of exposure to hazardous substances they're likely to encounter.

(-) (b) All site-related emergency response procedures.

(-) (c) Any identified potential fire, explosion, health, safety, or other hazards.

(•) (2) You must conduct briefings for employees, contractors, and subcontractors, or their representatives as follows:

(-) (a) A preentry briefing before any site activity is started.

(-) (b) Additional briefings, as needed, to make sure that the site-specific HASP is followed.

(-) (c) Make sure all employees working on the site are:

(■) (i) Informed of any risks identified.

(■) (ii) Trained on how to protect themselves and other workers against the site hazards and risks.

(•) (3) You must update all information to reflect current site activities and hazards.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20010 Train workers, supervisors and managers before work begins on the site.**

**IMPORTANT:**

(•) 1. The eighty-hour training requirement does NOT apply to law enforcement personnel entering illicit drug labs, securing the premises, and obtaining evidence. Attendance at a forty-hour training course, such as presented by the criminal justice training commission, is acceptable.

(•) 2. These training requirements do not apply to workers engaged in limited postemergency response activities provided they meet the conditions described in WAC 296-843-20020.

~~((You must:~~

**•) (1) You must** make sure workers have received twenty-four-, forty- or eighty-hour training as required by Table 3 before participating in hazardous waste operations.

(•) (2) You must make sure workers also receive site-specific training that thoroughly covers at least the following:

((-) (a) The personnel responsible for employee safety and health.

((-) (b) Safety, health, and other hazards known or suspected at the site.

((-) (c) Use of personal protective equipment.

((-) (d) Work practices to minimize worker's risk from the hazards.

((-) (e) Use of engineering and other controls and equipment on the site.

((-) (f) Medical surveillance provided.

((-) (g) Recognition of signs and symptoms that might indicate overexposure to site hazards.

((-) (h) The contents of the site-specific health and safety plan (HASP) required by this chapter.

**Note:** The site-specific training can be provided as part of the twenty-four-, forty- or eighty-hour training or as part of the employee briefings provided all training and information requirements of WAC 296-843-200 are met.

**Table 3  
Training Requirements**

| If   | Then   | Notes   |
|--|--|---|
| Work and exposures require use of atmosphere supplying respirators   | Provide eighty hours of training and three days of supervised on-site field experience | Eighty-hour training may be fulfilled as follows: <ul style="list-style-type: none"> <li>One eighty-hour training session with emphasis on hazards requiring the use of atmosphere-supplying respirators and of chemical protective clothing</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>One forty-hour training class as described below and an additional forty hours of training that emphasizes hazards requiring the use of atmosphere-supplying respirators and of chemical protective clothing</li> </ul> Refresher training, previous courses, supervised field experience, and previous work experience may count towards the additional forty hours, if it improves the worker's competency to use respirators and chemical protective clothing ensembles and procedures |
| Work and exposures may exceed the PEL or require protective clothing but do not require atmosphere supplying respirators | Provide forty hours of training and three days of supervised on-site field experience  | Workers with twenty-four hours of training may become forty hour trained with sixteen hours of (( <del>off</del> site)) off-site training and two additional days of  |

| If   | Then  | Notes   |
|--|---|---|
|  |   | supervised on-site field experience   |
| Workers are occasionally on-site to perform specific limited tasks and unlikely to be exposed above PELs or other published exposure limits  | Provide twenty-four hours of training and one day of supervised on-site field experience  |   |
| Workers are regularly on-site but work in areas fully characterized and monitored, with exposure under the PELs or other published exposure limits: <ul style="list-style-type: none"> <li>No need for respirators</li> <li>No health hazards</li> <li>No possibility of an emergency</li> </ul> | Provide twenty-four hours of training and one day of supervised on-site field experience  |   |
| Workers are at TSD facilities under normal operations (this does not include corrective actions cleanup at these facilities)   | Provide twenty-four hours of training and one day of supervised on-site field experience  |   |
| Employees perform emergency response activities  | Train workers to a level of competence in site emergencies, consistent with their assigned duties, to protect themselves and other employees  |   |
| Workers qualify for limited postemergency response clean-up training   | Provide at least eight hours of training  | See WAC 296-843-20020, Training for postemergency response, for detailed training information |
| Workers have been previously trained (includes equivalent training)  | Provide site-specific training, briefings and information required by this chapter and supervised field experience on the site of one day for twenty-four-hour and three days for forty- or eighty-hour trained workers | Document equivalent training and work experience as required by WAC 296-843-20025             |

**Note:** When calculating "training hours," ((WISHA))DOSH assumes a "normal" workday of eight hours with sufficient time for lunch and other breaks.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20015 Provide additional training to your managers and supervisors.** ~~((You must:~~

\*) (1) You must make sure the following receive appropriate training:

((-) (a) On-site managers.

((-) (b) Supervisors responsible for hazardous waste operations.

((-) (c) Supervisors who directly supervise employees in hazardous waste operations.

((\*) (2) You must make sure such supervisors and on-site managers receive the same training as that required by the workers they supervise (see WAC 296-843-20010).

((\*) (3) You must make sure such supervisors and managers receive a minimum of eight additional hours of specialized training including the following information:

((-) (a) Written site-specific health and safety plan (HASP):

((■) (i) Training plan.

((■) (ii) Personal protective equipment (PPE) plan.

((■) (iii) Spill containment plan.

((■) (iv) Emergency management procedures to use when a release of hazardous substances occurs.

((■) (v) Federal, state, and local agencies to be contacted if there is a release of hazardous substances.

((■) (vi) Sampling and monitoring plan (including procedures and techniques for monitoring health hazards).

((-) (b) Managing hazardous wastes and their disposal.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-843-20020 Training for postemergency response.** ~~((You must:~~

\*) (1) You must provide workers who participate only in limited postemergency response clean-up operations with a minimum of eight hours of training, when these conditions are met:

((-) (a) Cleanup is at a site that is a hazardous waste operation only because of an emergency response.

((-) (b) Clean-up work is directly supervised by someone who has completed at least forty hours of training in hazardous waste operations as required in this chapter.

((-) (c) Written documentation is maintained at the work site supporting less than twenty-four hours of training.

((-) (d) The work:

((■) (i) Is performed in an area that has been monitored and fully characterized by a qualified person as an area where employee exposure cannot exceed PELs or other published exposure levels.

((■) (ii) Does not require using respiratory protection.

((■) (iii) Does not require entry into permit-required confined spaces.

((■) (iv) Involves minimal health risks from skin exposure and absorption that are effectively controlled by PPE.

((-) (e) Workers have received training in your emergency response plan and hazard communication program.

**Reference:** For additional information, see WAC 296-843-160((:)) Emergency response, and WAC 296-901-140((:)) Hazard communication.

~~((You must:~~

\*) (2) You must make sure workers complete any other safety and health training needed to perform assigned clean-up tasks in a safe and healthful manner.

((-) Training may include topics such as the following:

((■) (a) Safety hazards and controls.

((■) (b) The content and availability of the site-specific health and safety plan.

((■) (c) Decontamination procedures.

((■) (d) Operating procedures related to assigned clean-up tasks.

((■) (e) PPE use and limitations.

((■) (f) Hands-on exercises for PPE and decontamination.

((■) (g) Information about heat stress and hypothermia.

((\*) (3) You must make sure workers have been trained within the last twelve months.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20025 Make sure your employees receive written documentation of training.** ~~((You must:~~

\*) (1) You must certify and document annually that each manager, supervisor, and worker has either:

((-) (a) Attended and successfully completed the training required by this section; ~~((OR~~

-)) or

(b) Demonstrated their competency.

((■) (2) You must record and maintain the method used to demonstrate competency.

((\*) (3) You must make sure your employees and supervisors who complete required training and field experience receive written training documentation authenticated by the responsible trainer.

((\*) (4) You must provide a copy of the certification or documentation to your employee upon request.

**Note:** Equivalent training may include academic or work-related training that covers subjects required by this chapter.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20030 Provide refresher training to employees.** ~~((You must:~~

\*) You must make sure all certified employees, supervisors, and managers receive eight hours of refresher training at least every twelve months that covers:

((-) (1) The topics specified in WAC 296-843-200.

((-) (2) Assessments or evaluations of work-related incidents.

((-) (3) Any other relevant topics.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-20035 Use qualified trainers.** ~~((You must:))~~ (1) You must use trainers that((:

- )) have demonstrated competent instructional skills((:
- )); and

(2) Demonstrate knowledge of the subject matter and have either:

((-) (a) Satisfactorily completed a training program in the subject; ~~((OR~~

-)) or

(b) Have the academic credentials and instructional experience needed for teaching the subject.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-210 Medical surveillance.**

**Your responsibility:**

To provide medical surveillance for employees that work in hazardous waste operations.

~~((You must:~~

~~Provide medical surveillance for your employees WAC 296-843-21005.))~~

|  |                                |
|--|--------------------------------|
| <u><b>You must meet the requirements ...</b></u> | <u><b>in this section:</b></u> |
| Provide medical surveillance for your employees  | <u>WAC 296-843-21005</u>       |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-21005 Provide medical surveillance for your employees.** ~~((You must:~~

•)) (1) You must establish a medical surveillance plan for all employees who meet any of the following:

((-) (a) Are or may be exposed to hazardous substances or health hazards for at least thirty days a year, at or above the permissible exposure limits (PELs) or other published exposure levels.

((-) (b) Wear a respirator for at least thirty days a year.

((-) (c) Are injured, become ill, or develop signs or symptoms of possible overexposure to hazardous substances or health hazards.

((-) (d) Are hazardous materials team (HAZMAT) members.

**Reference:** Employees who use respirators less than thirty days a year are required to have a respirator medical evaluation as outlined by chapter 296-842 WAC, Respirators. Completion of a medical examination required by this section will meet the requirement for a respirator medical evaluation.

~~((You must:~~

•)) (2) You must make sure medical examinations, consultations, and procedures are:

((-) (a) Scheduled according to Table 4, Medical Examination Schedule.

((-) (b) Performed or supervised by a licensed physician.

((-) (c) Available:

((■)) (i) At a reasonable time and place.

((■)) (ii) Without loss of pay.

((■)) (iii) Without cost to employees.

**Note:** Examples of costs include: Mileage, gas, bus fare, and time spent outside normal work hours.

**Table 4**  
**Medical Examination Schedule**

| <b>If a worker</b>   | <b>Then provide an examination</b>  |
|--|---|
| Is assigned to work that is covered by this chapter  | Before work assignment begins   |
| Continues to work in hazardous waste operations  | At least once every twelve months, unless the attending physician decides a different interval, up to twenty-four months or less than twelve months, is appropriate |
| Needs to be examined more frequently based on the examining physician's medical judgment   | At an interval less than twelve months  |
| Is reassigned to an area where their work is not covered<br><b>OR</b><br>Employment is terminated  | As soon as possible, unless he or she was examined within the past six months   |
| Has an incident that results in injury or illness<br><b>OR</b><br>Develops signs or symptoms of possible overexposure to hazardous substances and health hazards<br><b>OR</b><br>Has been exposed above the permissible exposure limits or published exposure levels | As soon as possible   |
| Requires follow-up examinations or consultations because of medical necessity for an exposure incident or injury   | When determined by the examining physician  |

~~((You must:~~

•)) (3) You must make sure the medical examination includes the following information for each affected employee:

((-) (a) A medical and work history, with special emphasis on symptoms related to handling hazardous substances and health hazards.

((-) (b) Information about fitness for duty including the ability to wear any personal protective equipment (PPE) under conditions that may be expected at the workplace.

((-) (c) Any additional information that is determined by the examining physician.

Note: The physician should consult the NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities <http://www.cdc.gov/niosh/85-115.html>.

~~((You must:~~

\*) (4) You must provide complete information to the examining physician, including:

((-) (a) A copy of WAC 296-843-210.

((-) (b) Medical evaluation information required by chapter 296-842 WAC, Respirators.

((-) (c) A description of the employee's duties that relate to hazardous substance exposure.

((-) (d) The actual or anticipated hazardous substance exposure levels for the employee.

((-) (e) A description of the PPE the employee uses or could use.

((-) (f) Information available from previous medical examinations.

((-) (g) Instruction to the physician that the physician's written opinion NOT include specific findings or diagnoses that are not related to occupational exposures.

Note: You are NOT required to send duplicate information to the physician for each employee.

~~((You must:~~

\*) (5) You must obtain the physician's written medical opinion that includes the following information:

((-) (a) Whether medical conditions were found that would increase the employee's risk for impairment during emergency response work or respirator use.

((-) (b) Limitations of the employee's assigned work, if any.

((-) (c) Examination and test results, if the employee requests this information.

((-) (d) A statement that the employee has been confidentially informed of medical examination results (including medical conditions requiring followup required by WAC 296-843-210).

((\*) (6) You must provide the employee with a copy of the physician evaluation.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-220 Recordkeeping and information access.**

**Your responsibility:**

To keep records and make them accessible to employees.

~~((You must:~~

~~Make your records accessible~~

~~WAC 296-843-22005.~~

~~Keep medical surveillance records for your employees~~

~~WAC 296-843-22010.))~~

| <u>You must meet the requirements ...</u>                   | <u>in this section:</u>  |
|---|--------------------------|
| <u>Make your records accessible</u>                         | <u>WAC 296-843-22005</u> |
| <u>Keep medical surveillance records for your employees</u> | <u>WAC 296-843-22010</u> |

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-22005 Make your records accessible.**

~~((You must:~~

\*) You must allow your written health and safety plan (HASP) and all other written plans required by this chapter to be inspected and copied by:

((-) (1) Employees or their designated representative.

((-) (2) Site contractors or their designated representatives.

((-) (3) Subcontractors or their designated representatives.

((-) (4) Personnel of any federal, state, or local agency with regulatory authority over the site.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

**WAC 296-843-22010 Keep medical surveillance records for your employees.**

~~((You must:~~

\*) (1) You must keep medical surveillance records for each affected employee that include:

((-) (a) The employee's name and Social Security number.

((-) (b) Physicians' written opinions including recommended limitations and results of examinations and tests.

((-) (c) Any employee medical complaints regarding hazardous substance exposures.

((-) (d) A copy of all information given to the examining physician (except a copy of this chapter).

((\*) (2) You must keep each employee's records for at least the duration of his or her employment plus thirty years.

Reference: For additional requirements on medical and exposure records, see chapter 296-62 WAC, Part B, Access to records.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-843-300 Definitions.

NEW SECTION

**WAC 296-848-099 Definitions. Action level.** An airborne concentration of inorganic arsenic of 5 micrograms per cubic meter (µg/m<sup>3</sup>) of air calculated as an eight-hour time-weighted average.

**Authorized personnel.** Individuals specifically permitted by the employer to enter the exposure control area to per-

form duties, or to observe employee exposure evaluations as a designated representative.

**Breathing zone.** The space around and in front of an employee's nose and mouth, forming a hemisphere with a 6- to 9-inch radius.

**CAS (chemical abstract service) number.** CAS numbers are internationally recognized and used on safety data sheets (SDSs) and other documents to identify substances. For more information see <http://www.cas.org/about>.

**Day.** Any part of a calendar day.

**Designated representative.** Any one of the following:

(a) Any individual or organization to which an employee gives written authorization.

(b) A recognized or certified collective bargaining agent without regard to written employee authorization.

(c) The legal representative of a deceased or legally incapacitated employee.

**Emergency.** Any event that could or does result in the unexpected significant release of inorganic arsenic. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

**Exposure.** The contact an employee has with inorganic arsenic, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Inorganic arsenic.** Elemental arsenic (As), copper aceto-arsenite, and inorganic compounds containing arsenic (measured as As), except arsine. Inorganic compounds do not contain the element carbon.

**Licensed health care professional (LHCP).** An individual whose legally permitted scope of practice allows him or her to provide some or all of the health care services required for medical evaluations.

**Permissible exposure limits (PELs).** PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are also specified in WISHA rules found in other chapters. The PEL for inorganic arsenic is an eight-hour time-weighted average (TWA<sub>8</sub>) of 10 micrograms per cubic meter (µg/m<sup>3</sup>).

**Time-weighted average (TWA<sub>8</sub>).** An exposure limit averaged over an 8-hour period that must not be exceeded during an employee's workday.

AMENDATORY SECTION (Amending WSR 06-02-060, filed 1/3/06, effective 4/1/06)

**WAC 296-848-100 Scope.** This chapter applies to all occupational exposure to inorganic arsenic.

**Definitions:**

**Inorganic arsenic** ~~((means))~~. Elemental arsenic (As), copper aceto-arsenite, and inorganic compounds containing arsenic (measured as As), except arsine. Inorganic compounds do not contain the element carbon.

**Exposure** ~~((is))~~. The contact an employee has with inorganic arsenic, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

~~((Helpful tool: Arsenic contamination in soil, information and guidance for employers.~~

~~Use this tool if you have employees who work with soil. It will help you find out if this rule is applicable to your employee's exposure to soil.))~~

- Exemptions:**
- (\*) This chapter does not apply to any of the following:
  - (-) 1. Exposures during agricultural operations.
  - (-) 2. Pesticide applications, including the treatment of wood with preservatives.
  - (-) 3. Use of wood treated with inorganic arsenic.
  - (-) 4. Arsine, a gas identified by Chemical Abstract Service (CAS) Registry No. 7784-42-1.
  - (-) 5. Inorganic arsenic present in a form and handled in such a way that airborne exposures could not occur. For example, inorganic arsenic present in glass is fused in the material. Due to the fused form, airborne exposure can not occur when the glass is scored and subsequently broken.

All requirements in this chapter will not apply to every workplace with an occupational exposure. The following steps will show you which requirements apply to your workplace.

**Step 1:** Follow requirements in the basic rules sections, WAC 296-848-20010 through 296-848-20090.

- This includes completing an exposure evaluation, as specified in Exposure evaluations, WAC 296-848-20060, to:
  - Obtain employee eight-hour exposure monitoring results of airborne inorganic arsenic; ~~((AND))~~ and
  - Determine if employee exposure monitoring results are above, at, or below these values:
    - Eight-hour time-weighted average (TWA<sub>8</sub>) . . . . . 10 micrograms per cubic meter (µg/m<sup>3</sup>).
    - Eight-hour action level (AL) . . . . . 5 µg/m<sup>3</sup>.

**Step 2:** Use employee exposure monitoring results from Step 1 and follow Table 1 to find out which additional sections of this chapter apply to your workplace.

**Table 1**  
**Sections That Apply To Your Workplace**

| <b>If:</b>  | <b>Then continue to follow the Basic Rules, and these additional requirements:</b>   |
|---|--|
| <ul style="list-style-type: none"> <li>• Employee exposure monitoring results are above the TWA<sub>8</sub></li> </ul>  | <ul style="list-style-type: none"> <li>• Training, exposure monitoring, and medical monitoring, WAC 296-848-30005 through 296-848-30080; <b>AND</b></li> <li>• Exposure control areas, WAC 296-848-40005 through 296-848-40045.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Employee exposure monitoring results are:                             <ul style="list-style-type: none"> <li>- At or below the TWA<sub>8</sub>;</li> <li><b>AND</b></li> <li>- At or above AL</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Training, exposure monitoring, and medical monitoring, WAC 296-848-30005 through 296-848-30080.</li> </ul>  |

|  |   |
|--|---|
| <b>If:</b>   | <b>Then continue to follow the Basic Rules, and these additional requirements:</b>  |
| <ul style="list-style-type: none"> <li>Employee exposure monitoring results are below the AL;</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>Eye or skin irritation from exposure to inorganic arsenic cannot occur</li> </ul> | <ul style="list-style-type: none"> <li>No additional requirements apply if exposures remain stable.</li> </ul>  |
| <ul style="list-style-type: none"> <li>Employees could experience eye or skin irritation from exposure to inorganic arsenic</li> </ul>   | <ul style="list-style-type: none"> <li>Training in WAC 296-848-30005.</li> <li>Washing, showering, and changing in WAC 296-848-40030.</li> <li>Personal protective equipment (PPE) in WAC 296-848-40040.</li> </ul> |

**AMENDATORY SECTION** (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-200 Basic rules.**

**Summary:**

**Your responsibility:**

To measure and minimize employee exposure to inorganic arsenic.

**IMPORTANT:**

The sections listed in basic rules apply to all employers covered by the scope of this chapter, WAC 296-848-100. To find additional sections that may apply to you, go to the Scope, WAC 296-848-100, and follow Table 1.

- ~~((Contents~~
- ~~Preventive practices~~
- ~~WAC 296-848-20010.~~
- ~~Washing facilities~~
- ~~WAC 296-848-20025.~~
- ~~Exposure evaluations~~
- ~~WAC 296-848-20060.~~
- ~~Notification~~
- ~~WAC 296-848-20070.~~
- ~~Exposure records~~
- ~~WAC 296-848-20090.))~~

| <u>You must meet the requirements ...</u> | <u>in this section:</u>  |
|---|--------------------------|
| <u>Preventive practices</u>               | <u>WAC 296-848-20010</u> |
| <u>Washing facilities</u>                 | <u>WAC 296-848-20025</u> |
| <u>Exposure evaluations</u>               | <u>WAC 296-848-20060</u> |
| <u>Notification</u>                       | <u>WAC 296-848-20070</u> |
| <u>Exposure records</u>                   | <u>WAC 296-848-20090</u> |

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-20010 Preventive practices.** ~~((You must:))~~ (1) You must effectively communicate the hazards of inorganic arsenic by doing both of the following:

~~((~~ **(a)** ~~))~~ Keep container labels free of statements that contradict or detract from the labels' hazard warning.

**Note:** You may use labels required by other laws, rules, or ordinances in addition to, or in combination with, labels required by this section.

~~((You must:))~~

~~• Prior to June 1, 2015, in lieu of the labeling requirements in WAC 296-848-3007, employers may apply precautionary labels to all shipping and storage containers of inorganic arsenic, and to all products containing inorganic arsenic, bearing the following legend:~~

~~Danger~~  
~~Contains Inorganic Arsenic~~  
~~Cancer Hazard~~  
~~Harmful if Inhaled or Swallowed~~  
~~Use Only with Adequate Ventilation~~  
~~or~~  
~~Respiratory Protection~~

~~•~~ **(b)** Labels are not required when the inorganic arsenic in the product is bound in such a manner so as to make unlikely the possibility of airborne exposure to inorganic arsenic. (Possible examples of products not requiring labels are semiconductors, light emitting diodes and glass.)

**Note:** ~~((~~ **1.** ~~))~~ You should keep containers tightly covered when not in use to help prevent unnecessary exposure and accidental spills.  
~~((~~ **2.** ~~))~~ Contaminated items should be handled and disposed of to prevent further exposure in the workplace. For example, vacuuming or wet wiping contaminated equipment helps prevent the release of dust into the air.

**Reference:** ~~((~~ **Additional requirements are found in other chapters:**  
~~((~~ **1.** ~~))~~ For spills, leaks, or other releases, go to Emergency response, chapter 296-824 WAC.  
~~((~~ **2.** ~~))~~ For labeling go to WAC 296-901-140, Hazardous communication.

~~((You must:))~~

~~(2) You must~~ establish safe and effective housekeeping and maintenance practices by doing all the following:

~~((~~ **(a)** ~~))~~ Develop and keep a written housekeeping and maintenance plan that lists appropriate frequencies for:

~~((~~ **(i)** ~~))~~ Housekeeping operations; ~~AND~~  
~~and~~

~~((~~ **(ii)** ~~))~~ Cleaning and maintaining dust collection equipment.

~~((~~ **(b)** ~~))~~ Keep surfaces free of accumulations of inorganic arsenic, to the degree feasible.

~~((~~ **(c)** ~~))~~ When cleaning floors and other accessible surfaces:

~~((~~ **(i)** ~~))~~ Use vacuuming or other cleaning methods that minimize the release of inorganic arsenic into the air.

~~((~~ **(ii)** ~~))~~ Do not use compressed air.

~~((~~ **(iii)** ~~))~~ Select vacuums that have high efficiency particulate air (HEPA) filters.

((-)) (iv) Use and empty vacuums in a way that minimizes the release of inorganic arsenic back into the workplace.

**Note:** ((\*) 1. Shoveling or brushing may be used only when vacuuming or other cleaning methods have not been effective.

((\*) 2. Using non-HEPA vacuums will increase inorganic arsenic contamination in air and on area surfaces.

~~((You must:))~~

~~(\*)~~ (3) You must maintain ventilation systems, including dust collection equipment, to make sure they are effective. Do all of the following:

((-)) (a) Perform periodic inspections for effectiveness.

((-)) (b) Periodically clean the equipment.

((-)) (c) Keep a note of the most recent inspection for effectiveness, and cleaning or maintenance.

~~((3))~~ (4) Prevent eye or skin contact with:

((\*) (a) Arsenic trichloride; ~~((AND~~

~~\*)~~ and

(b) Liquid or particulate forms of inorganic arsenic when contact could cause eye or skin irritation.

**Note:** Arsenic trichloride is corrosive and can be quickly absorbed through skin.

**AMENDATORY SECTION** (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-20025 Washing facilities.** ~~((You must:))~~

~~(\*)~~ You must provide washing facilities for employees exposed to inorganic arsenic.

**References:** For additional washing facility requirements, go to another chapter, the Safety and health core rules, chapter 296-800 WAC, and find the section titled, Provide convenient and clean washing facilities, WAC 296-800-23025.

**AMENDATORY SECTION** (Amending WSR 07-06-005, filed 2/22/07, effective 4/1/07)

**WAC 296-848-20060 Exposure evaluations.**

**IMPORTANT:**

((\*) 1. This section applies when workplace operations create potential airborne exposure to inorganic arsenic.

((\*) 2. When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

((\*) 3. Following this section will fulfill the requirements to identify and evaluate respiratory hazards found in chapter 296-841 WAC, Airborne contaminants.

~~((You must:))~~

(1) You must conduct an employee exposure evaluation to accurately determine airborne concentrations of inorganic arsenic by completing Steps 1 through 5 of the Exposure Evaluation Process, each time any of the following apply:

((\*) (a) No evaluation has been conducted.

((\*) (b) Changes have occurred in any of the following areas that may result in new or increased exposures:

((-)) (i) Production.

((-)) (ii) Processes.

((-)) (iii) Exposure controls such as ventilation systems or work practices.

((-)) (iv) Personnel.

((\*) (c) You have any reason to suspect new or increased exposure may occur.

(2) You must provide affected employees and their designated representatives an opportunity to observe exposure monitoring during Step 4 of the Exposure Evaluation Process.

((\*) (a) Make sure observers do not interfere with exposure measurements.

((\*) (b) Make sure observers are entitled to:

((-)) (i) An explanation of your exposure measurement and monitoring procedures;

((-)) (ii) Observe all tasks of exposure measurement performed at the workplace; ~~((AND~~

~~-))~~ and

(iii) Receive a copy of the exposure measurement results when you obtain them; or are allowed to record the exposure measurement results, if made during observations.

((\*) (c) Make sure observers who enter areas with inorganic arsenic exposure:

((-)) (i) Are provided with and use the same protective clothing, respirators, and other personal protective equipment (PPE) that employees working in the area are required to use;

~~((AND~~

~~-))~~ and

(ii) Follow safety and health requirements that apply.

### Exposure Evaluation Process

#### IMPORTANT:

Following the Exposure Evaluation Process is not necessary when you have documentation conclusively demonstrating inorganic arsenic exposures for a particular operation and material, cannot exceed the action level (AL) during any conditions reasonably anticipated. Documentation can be based on quantitative information such as soil test results OR qualitative information such as observations of how inorganic arsenic-containing materials are handled.

- Retain this documentation for as long as you rely on it.

**Step 1:** Identify all employees who have potential airborne exposure to inorganic arsenic in your workplace.

**Step 2:** Select employees from those identified in Step 1 who will have their eight-hour exposures monitored.

• Make sure the exposures of the employees selected represent eight-hour exposures for all employees identified in Step 1, including each job classification, work area, and shift.

**Note:** ((\*) A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records required by this chapter in Exposure records, WAC 296-848-20090. This description can be created while completing Steps 2 through 4 of this exposure evaluation process.

**Step 3:** Determine how you'll obtain employee exposure monitoring results.

• Select and use a method that meets the following criteria for accuracy:

- ±25%, with a confidence level of 95%, when concentrations are potentially at or above an eight-hour time-weighted average of 10 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ );

~~((OR))~~ or

- ±35%, with a confidence level of 95%, when concentrations are potentially between the eight-hour time-weighted averages of 5 µg/m<sup>3</sup> and 10 µg/m<sup>3</sup>.

**Note:** ((\*) Here are examples of methods that meet this accuracy requirement:

((-) 1. OSHA Method ID105 found by going to (<http://www.osha.gov/dts/sltc/methods/toe.html>) <http://www.osha.gov/dts/sltc/methods/>.

((-) 2. NIOSH method 7901 found by going to <http://www.cdc.gov/niosh/homepage.html> and linking to the NIOSH Manual of Analytical Methods.

**Step 4:** Obtain employee exposure monitoring results by collecting air samples representing employees identified in Step 1.

- Sample at least one shift representative of the eight-hour exposure, for each employee selected in Step 2.
- Make sure samples are collected from each selected employee's breathing zone.

**Note:** ((\*) 1. You may use any sampling method that meets the accuracies specified in Step 3. Examples of these methods include:

((-) a. Real-time monitors that provide immediate exposure monitoring results.

((-) b. Equipment that collects samples that are sent to a laboratory for analysis.

((\*) 2. The following are examples of methods for collecting samples representative of eight-hour exposures.

((-) a. Collect one or more continuous samples, for example, a single eight-hour sample or four two-hour samples.

((-) b. Take a minimum of 4 to 7 brief samples, such as fifteen-minute samples, during the work shift and at times selected randomly.

((\*) 3. For work shifts longer than eight hours, monitor the continuous eight-hour portion of the shift expected to have the highest average exposure concentration.

**Step 5:** Have the samples you collected analyzed to obtain monitoring results representing eight-hour exposures.

- Go to the Scope of this chapter, WAC 296-848-100, and compare employee exposure monitoring results to the values found in Step 1 and follow Step 2 to determine if additional sections of this chapter apply.

**Note:** ((\*) 1. You may contact your local ((WISHA)) DOSH consultant for help:

((-) a. Interpreting data or other information.

((-) b. Determining eight-hour employee exposure monitoring results.

((\*) 2. To contact a WISHA consultant:

((-) a. Go to the Safety and health core rules, chapter 296-800 WAC((:)).

~~((AND~~

~~—Find the Resources section, and under "Other Resources," find *Service Locations for Labor and Industries*.)~~

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-20070 Notification.** ~~((You must:~~

~~•)) (1) You must provide written notification of exposure monitoring results, including notification about whether exposures exceed the permissible exposure limit (PEL), to employees represented by your exposure evaluation, within~~

five business days after the monitoring results become known to you.

~~((-) (a) In addition, when employee exposure monitoring results are above the permissible exposure limit (PEL), provide written notification of all the following within fifteen business days after these exposure monitoring results become known to you.~~

~~((•)) (i) Corrective actions being taken and a schedule for completion; ~~((AND~~ ~~•)) and~~~~

~~((ii) Any reason why exposures cannot be lowered to below the PEL.~~

**Note:** ((\*) 1. You can notify affected employees either individually or post the notifications in areas readily accessible to affected employees.

((\*) 2. When notifying employees about corrective actions, your notification may refer them to a separate document that is available and provides the required information.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-20090 Exposure records.** ~~((You must:~~ ~~•)) (1) You must establish and keep complete and accurate records for all exposure monitoring conducted under this chapter. Make sure the record includes, at least:~~

~~((-) (a) The name, Social Security number or other unique identifier, and job classification of the employee sampled and all other employees represented by the sampled employee.~~

~~((-) (b) A description of the methods used to obtain exposure monitoring results and evidence of the method's accuracy.~~

~~((-) (c) A description of the procedure used to obtain representative employee exposure monitoring results.~~

~~((-) (d) The date, number, duration, location, and the result of each sample taken.~~

~~((-) (e) Any environmental conditions that could affect exposure concentration measurements.~~

**Note:** It's useful to record any personal protective equipment worn by the employee in addition to the type of respirator worn.

~~((You must:~~

~~•)) (2) You must keep exposure monitoring records for at least thirty years.~~

**Reference:** ((\*) 1. To see additional requirements for employee exposure records including access and transfer requirements, go to another chapter, Employee medical and exposure records, chapter 296-802 WAC.

((\*) 2. Exposure monitoring records need to be kept longer than thirty years for employees participating in medical monitoring. Go to Medical records, WAC 296-848-30080, found within this chapter.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-300 Training, exposure monitoring, and medical monitoring.**

**Summary:**

**Your responsibility:**

To detect any significant changes in employee health and exposure monitoring results.

**IMPORTANT:**

**(\*) 1.** These sections apply when skin or eye irritation could occur or when employee exposure monitoring results are either:

**(-) a.** At or above the action level (AL) of 5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) for inorganic arsenic; (~~OR~~

~~-)~~ **or**

**b.** Above the permissible exposure limit (PEL) of 10  $\mu\text{g}/\text{m}^3$  for inorganic arsenic.

~~(Contents~~

~~Training~~

~~WAC 296-848-30005.~~

~~Communication of hazards~~

~~WAC 296-848-30007.~~

~~Periodic exposure evaluations~~

~~WAC 296-848-30010.~~

~~Medical evaluations~~

~~WAC 296-848-30030.~~

~~Medical records~~

~~WAC 296-848-30080.))~~

| <u>You must meet the requirements ...</u> | <u>in this section:</u>  |
|---|--------------------------|
| <u>Training</u>                           | <u>WAC 296-848-30005</u> |
| <u>Communication of hazards</u>           | <u>WAC 296-848-30007</u> |
| <u>Periodic exposure evaluations</u>      | <u>WAC 296-848-30010</u> |
| <u>Medical evaluations</u>                | <u>WAC 296-848-30030</u> |
| <u>Medical records</u>                    | <u>WAC 296-848-30080</u> |

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-30005 Training.** (~~You must:~~

~~\*) (1) You must train employees:~~

~~(-) (a) Who are exposed above the action level (AL) of 5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) of air; (~~OR~~~~

~~-) or~~

~~(b) Who could experience eye or skin irritation from exposure.~~

~~(\*) (2) You must provide training:~~

~~(-) (a) At the time of initial assignment; (~~AND~~~~

~~-) and~~

~~(b) At least every twelve months after initial training.~~

~~(\*) (3) You must make sure training and information includes all of the following:~~

~~(-) (a) A review of WAC 296-848-100 through 296-848-40045, and 296-848-500.~~

~~(-) (b) The following health information about inorganic arsenic:~~

~~(\*) (i) Inorganic arsenic is a poison and can affect your body if it's swallowed or inhaled.~~

~~(\*) (ii) Exposure to airborne concentrations of inorganic arsenic may cause lung cancer and can be a skin irritant.~~

~~(\*) (iii) Arsenic trichloride can be absorbed readily through your skin and is especially dangerous.~~

~~(\*) (iv) Wash hands thoroughly before eating or smoking to help minimize your risk for swallowing inorganic arsenic.~~

~~(-) (c) The purpose for medical evaluations and a description of how you are fulfilling the medical evaluation requirements of this chapter found in Medical evaluations, WAC 296-848-30030.~~

~~(\*) (4) You must make a copy of this chapter readily available to all employees required to be trained under this section.~~

**Reference:**

~~(\*) 1.~~ To see additional training and information requirements in other chapters, go to the:

~~(-) a.~~ Respirators rule, chapter 296-842 WAC.

~~(-) b.~~ WAC 296-901-140, Hazardous communication.

~~(\*) 2.~~ When following these requirements, include specific information about potential exposures to inorganic arsenic, such as the types of operations, locations, quantities, exposure sources, exposure controls, inorganic arsenic use, and storage.

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-30007 Communication of hazards.**

~~(You must:)~~

Hazard communication - General.

~~(\*) (1) Chemical manufacturers, importers, distributors and employers (~~shall~~) must comply with all requirements of the Hazard Communication Standard (HCS), WAC 296-901-140 for inorganic arsenic.~~

~~(\*) (2) In classifying the hazards of inorganic arsenic at least the following hazards are to be addressed: Cancer; liver effects; skin effects; respiratory irritation; nervous system effects; and acute toxicity effects.~~

~~(\*) (~~Employers shall~~) (3) You must include inorganic arsenic in the hazard communication program established to comply with the HCS, WAC 296-901-140. Employers (~~shall~~) must ensure that each employee has access to labels on containers of inorganic arsenic and to safety data sheets, and is trained in accordance with the requirements of HCS and WAC 296-848-30005.~~

**AMENDATORY SECTION** (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-30010 Periodic exposure evaluations.**

**Exemption:**

- Periodic exposure evaluations aren't required if exposure monitoring results conducted to fulfill requirements in Exposure evaluation, WAC 296-848-20060, are below the action level (AL).

~~(You must:~~

~~\*) You must obtain employee exposure monitoring results as specified in Table 2 by repeating Steps 2, 4, and 5 of the Exposure Evaluation Process found within this chapter, in Exposure evaluations, WAC 296-848-20060.~~

**Note:**

If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you limit sample collection to the work shift with higher exposures and can use results to represent all employees performing the operation on other shifts.

**Table 2**  
**Periodic Exposure Evaluation Frequencies**

| <b>If 8-hour employee exposure monitoring results:</b>   | <b>Then:</b>   |
|--|--|
| Are between the:<br>- Action level (AL) of 5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ );<br><b>AND</b><br>- Permissible exposure limit (PEL) of 10 $\mu\text{g}/\text{m}^3$                                       | Conduct additional exposure evaluations at least every six months for the employees represented by the monitoring results.   |
| Are above the PEL  | Conduct additional exposure evaluations at least every three months for the employees represented by the monitoring results. |
| For employees previously above the PEL, have decreased:<br>- To a concentration between the PEL and AL;<br><b>AND</b><br>- The decrease is demonstrated by two consecutive exposure evaluations made at least seven days apart | You may decrease your evaluation frequency to every six months for the employees represented by the monitoring results.      |
| Have decreased to below the AL;<br><b>AND</b><br>The decrease is demonstrated by two consecutive exposure evaluations made at least seven days apart   | You may stop periodic employee exposure evaluations for employees represented by the monitoring results.                     |

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-848-30030 Medical evaluations.**

**IMPORTANT:**

((\*) Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

~~((You must:~~

\*) (1) You must make medical evaluations available to current employees who have been, are, or will be exposed to inorganic arsenic concentrations above the AL:

((-) (a) At least thirty days in any twelve-month period;

~~((OR~~  
-)) or

(b) A total of ten years or more of combined employment with you or previous employers with at least thirty days of exposure per year.

((\*) (2) You must make medical evaluations available at no cost to employees.

((-) (3) You must pay all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours.

((\*) (4) You must make medical evaluations available at reasonable times and places.

((\*) (5) You must make medical evaluations available by completing Steps 1 through 6 of the Medical Evaluation Process for each employee covered.

**Note:** ((\*) 1. Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by inorganic arsenic are not excluded from receiving a separate medical evaluation for a respirator use.

((\*) 2. If employers discourage participation in medical monitoring for health effects caused by inorganic arsenic, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy.

**((Helpful tool:**

**~~Declination form for nonemergency related medical evaluations.~~**

~~You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to inorganic arsenic. To see this form, go to the Resources section within this chapter.))~~

**Medical Evaluation Process**

**Step 1:** Identify employees who qualify, as stated above, for medical evaluations.

**Step 2a:** Make medical evaluations available for employees identified in Step 1 at the following times:

- Initially, when employees are assigned to work in an area where exposure monitoring results are, or will likely be, above the action level for at least thirty days in a twelve-month period.

- Periodically as specified in Table 3.

- When employment with exposure ends, if the employee has not had an evaluation within the six-month period before exposure ends. Include in these evaluations the same content as specified in Table 4 for initial evaluations, excluding a chest X-ray.

**Table 3**  
**Frequencies for Periodic Medical Evaluations**

| <b>For:</b>  | <b>Provide periodic medical evaluations every:</b> |
|--|--|
| Employees less than forty-five years old with less than ten years of exposure above the AL | Twelve months;                                     |
| Employees forty-five or older;<br><b>AND</b>   | Six months;<br><b>AND</b>                          |

| For:  | Provide periodic medical evaluations every:  |
|---|--|
| Employees with more than ten years of exposure above the AL | Twelve months to obtain a fourteen by seventeen-inch posterior-anterior chest X-ray for monitoring purposes, unless the LHCP has determined a different frequency for periodic X-rays. |

**Step 2b:** Provide appropriate medical examination and emergency treatment when an employee identified in Step 1 develops signs or symptoms commonly associated with inorganic arsenic exposure.

**Step 3:** Select a licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

**Step 4:** Make sure the LHCP receives all of the following before the medical evaluation is performed:

- A copy of this chapter.
- A description of the duties of the employee being evaluated and how these duties relate to inorganic arsenic exposure.

- The anticipated or representative exposure monitoring results for the employee being evaluated.

- A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.

- Information from previous employment-related examinations when this information is not available to the examining LHCP.

- Instructions that the written opinions the LHCP provides you be limited to the following information:

- Results from examinations and tests.
- The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to inorganic arsenic.

- Any recommended limitations for:
  - Inorganic arsenic exposure; (~~AND~~) and
  - Use of respirators or other PPE.

- A statement that the employee has been informed of medical results and medical conditions caused by inorganic arsenic exposure requiring further examination or treatment.

**Step 5:** Make the medical evaluation available to the employee. Make sure it includes the content listed in Table 4, Content of Medical Evaluations.

**Step 6:** Obtain the LHCP's written opinion for the employee's medical evaluation and give a copy to the employee.

- Make sure the written opinion is limited to the information specified for written opinions in Step 4.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 4**  
**Content of Medical Evaluations**

| When conducting:      | Include:  |
|-----------------------|---|
| An initial evaluation | • A work history and medical history including: |

| When conducting:   | Include:  |
|--|---|
|  | - Smoking history.<br>- The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing.<br>• A physical examination that includes:<br>- A fourteen by seventeen-inch posterior-anterior chest X-ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating.<br>- A nasal and skin examination.<br>• Additional examinations the licensed health care professional (LHCP) believes appropriate based on the employee's exposure to inorganic arsenic or respirator use.   |
| Periodic evaluations for employees less than forty-five years old with less than ten years of exposure above the action level (AL) | • The same content as specified for initial evaluations repeated every twelve months.   |
| Periodic evaluations for employees:<br>• Forty-five or older;<br><br>OR<br>• With more than ten years of exposure above the AL     | • The following content repeated every six months:<br>- A work history and medical history including:<br>■ Smoking history.<br>■ The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing.<br>- A physical examination that includes a nasal and skin examination.<br>- Additional examinations the LHCP believes appropriate based on the employee's exposure to inorganic arsenic or respirator use.<br>• A physical examination, repeated every twelve months, that obtains a fourteen by seventeen-inch posterior-anterior chest X-ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating. |

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-30080 Medical records.**

**IMPORTANT:**

((★)) This section applies when a medical evaluation is performed, or any time a medical record is created for an employee exposed to inorganic arsenic.

~~((You must:~~

★)) (1) You must establish and maintain complete and accurate medical records for each employee receiving a medical evaluation and make sure the records include all the following:

((-) (a) The employee's name and Social Security number, or other unique identifier.

((-) (b) A description of the employee's duties.

((-) (c) A copy of the licensed health care professional's (LHCP's) written opinions.

((-) (d) The anticipated or representative employee exposure monitoring results provided to the LHCP for the employee.

((★)) (2) You must maintain medical evaluation records for the duration of employment plus thirty years.

**Note:** ((★)) Your medical provider may keep these records for you. Other medical records, such as the employee's medical history or X-ray, need to be kept as a confidential record by the medical provider and accessed only with the employee's consent.

**Reference:** ((★)) To see additional requirements for employee medical record, including access and transfer requirements, go to Employee medical and exposure records, chapter 296-802 WAC.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-400 Exposure control areas.**

**Summary:**

**Your responsibility:**

To protect employees from exposure to inorganic arsenic by using feasible exposure controls and appropriate respirators.

**IMPORTANT:**

These sections apply when employee exposure monitoring results are above the permissible exposure limit (PEL) of 10 micrograms per cubic meter (µg/m<sup>3</sup>) of air.

~~((Contents~~

~~Exposure control plan~~

~~WAC 296-848-40005.~~

~~Exposure controls~~

~~WAC 296-848-40020.~~

~~Exposure control areas~~

~~WAC 296-848-40025.~~

~~Clean-up facilities and lunchrooms~~

~~WAC 296-848-40030.~~

~~Personal protective equipment~~

~~WAC 296-848-40040.~~

~~Respirators~~

~~WAC 296-848-40045.))~~

| <u>You must meet the requirements ...</u>  | <u>in this section:</u>  |
|--|--------------------------|
| <u>Exposure control plan</u>               | <u>WAC 296-848-40005</u> |
| <u>Exposure controls</u>                   | <u>WAC 296-848-40020</u> |
| <u>Exposure control areas</u>              | <u>WAC 296-848-40025</u> |
| <u>Clean-up facilities and lunchrooms</u>  | <u>WAC 296-848-40030</u> |
| <u>Personal protective equipment (PPE)</u> | <u>WAC 296-848-40040</u> |
| <u>Respirators</u>                         | <u>WAC 296-848-40045</u> |

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-40005 Exposure control plan.**

**IMPORTANT:**

Use of employee rotation to control exposures is not advisable since inorganic arsenic is a known carcinogen.

~~((You must:~~

★)) (1) You must establish and implement a complete written exposure control plan that includes at least the following, for exposure control areas:

((-) (a) A description of each operation releasing inorganic arsenic, for example:

~~((■)) (i) Crew size.~~

~~((■)) (ii) Current exposure controls.~~

~~((■)) (iii) Materials processed.~~

~~((■)) (iv) Machinery used.~~

~~((■)) (v) Operating procedures.~~

~~((■)) (vi) Maintenance practices.~~

((-) (b) Exposure evaluation data.

((-) (c) A report of the technology considered for exposure controls.

((-) (d) Engineering plans and studies used as a basis for selecting exposure controls.

((-) (e) A detailed schedule for implementing:

~~((■)) (i) Feasible exposure controls, if immediate implementation is not possible.~~

~~((■)) (ii) Changes to enhance current exposure controls, when necessary.~~

((-) (f) An analysis of the effectiveness of the exposure controls considered, when controls will not reduce exposures to or below the permissible exposure limit (PEL).

((-) (g) Other relevant information.

((★)) (2) You must review and update your exposure control plan at least every six months to keep it current.

((★)) (3) You must implement exposure controls on the quickest schedule feasible if controls will not reduce exposure to or below the PEL.

((★)) (4) You must provide a copy of your exposure control plan to affected employees and their designated representatives, when they ask to review or copy it.

AMENDATORY SECTION (Amending WSR 07-06-005, filed 2/22/07, effective 4/1/07)

**WAC 296-848-40020 Exposure controls.**

**IMPORTANT:**

((\*) 1. Use of employee rotation to control exposures is not advisable since inorganic arsenic is a known carcinogen.

((\*) 2. Respirators and other personal protective equipment (PPE) do not substitute for feasible exposure controls.

~~((You must:~~

\*) You must use feasible exposure controls to reduce exposures to or below the permissible exposure limit (PEL), or as low as achievable.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-40025 Exposure control areas.** ~~((You must:~~

\*) (1) You must establish temporary or permanent exposure control areas where airborne concentrations of inorganic arsenic are above the permissible exposure limit (PEL) by doing all the following:

((-) (a) Distinguish the boundaries of exposure control areas from the rest of the workplace in any way that minimizes employee access.

((-) (b) Allow only authorized personnel to enter exposure control areas.

((-) (c) Post signs at access points to exposure control areas that include this warning:

|  |
|--|
| DANGER                                   |
| INORGANIC ARSENIC                        |
| MAY CAUSE CANCER                         |
| DO NOT EAT, DRINK OR SMOKE               |
| WEAR RESPIRATORY PROTECTION IN THIS AREA |
| AUTHORIZED PERSONNEL ONLY                |

~~((Prior to June 1, 2016, employers may use the following legend in lieu of that specified above in this section:~~

|                           |
|---------------------------|
| DANGER                    |
| Inorganic Arsenic         |
| Cancer Hazard             |
| Authorized Personnel Only |
| No Smoking or Eating      |
| Respirator Required       |

-) (i) Make sure signs are kept clean and well lit so they are easy to read.

((-) (ii) Keep signs and areas near them free of statements that contradict or detract from their message.

**Note:** This requirement does not prevent you from posting signs required by other laws, rules, or ordinances.

~~((You must:~~

-) (2) You must make sure employees entering exposure control areas have an appropriate respirator.

((-) (3) You must prevent all of the following activities from occurring in exposure control areas unless they are conducted in required lunchrooms, change rooms, or showers:

((■) (a) Eating food or drinking beverages.

((■) (b) Smoking.

((■) (c) Chewing tobacco or gum.

((■) (d) Applying cosmetics.

**Note:** ((\*) 1. You may use permanent or temporary enclosures, caution tape, ropes, painted lines on surfaces, or other materials to visibly distinguish exposure control areas or separate them from the rest of the workplace.

((\*) 2. When distinguishing exposure control areas, you should consider factors such as:

((-) a. The level and duration of airborne exposure.

((-) b. Whether the area is permanent or temporary.

((-) c. The number of employees in adjacent areas.

**Reference:** To see other requirements for respirators within this chapter, go to Respirators, WAC 296-848-40045.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

**WAC 296-848-40030 Clean-up facilities and lunchrooms.** ~~((You must:~~

\*) (1) You must provide the following facilities for employees who could experience eye or skin irritation from exposure to inorganic arsenic or who work in exposure control areas:

((-) (a) Clean change rooms with separate storage for street clothes and personal protective equipment (PPE).

((-) (b) Shower facilities.

((\*) (2) You must make sure employees who could experience eye or skin irritation from exposure to inorganic arsenic or who work in exposure control areas:

((-) (a) Shower at the end of the work shift; ~~((AND~~ -) and

(b) Wash their hands and face before eating.

((\*) (3) You must provide lunchrooms for employees working in exposure control areas that are:

((-) (a) Located so they are readily accessible to the employees.

((-) (b) Temperature controlled.

((-) (c) Under positive pressure compared to surrounding areas.

((-) (d) Provided with a filtered air supply.

**Note:** Lunchrooms may be located within exposure control areas, but are considered separate from the exposure control area.

((\*) (4) You must do the following when exposures in exposure control areas exceed an eight-hour time-weighted average of 100 micrograms of arsenic per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ):

((-) (a) Provide facilities for employees working in exposure control areas where they can remove excess contamination from protective clothing and shoes.

((-) (b) Make sure employees vacuum protective clothing and clean or change shoes before entering showers, change rooms, or lunchrooms.

**Reference:** To see additional requirements for hygiene facilities:

((\*) 1. Go to the Safety and health core rules, chapter 296-800 WAC.

((\*) 2. Find Drinking water, bathrooms, washing facilities, and waste disposal, WAC 296-800-230.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-848-40040 Personal protective equipment (PPE).** ~~((You must~~

~~\*) (1) You must provide PPE at no cost to employees, make sure employees use, and maintain their PPE as follows:~~

~~((-) (a) Provide clean and dry protective clothing to employees who could experience eye or skin irritation from exposure to inorganic arsenic or who work in exposure control areas.~~

~~((-) (b) Provide impervious protective clothing to employees exposed to arsenic trichloride.~~

- Note:**
- ~~((\*) 1. Arsenic trichloride is corrosive and can be rapidly absorbed through skin.~~
  - ~~((\*) 2. Examples of protective clothing appropriate for inorganic arsenic exposures include:~~
    - ~~((-) a. Coveralls or similar full-body work clothing.~~
    - ~~((-) b. Gloves, and shoes or coverlets.~~
    - ~~((-) c. Face shields or vented goggles when necessary to prevent eye irritation.~~

~~((You must~~

~~-) (c) Make sure employees do not remove inorganic arsenic from PPE by blowing or shaking.~~

~~((-) (d) Make sure protective clothing is removed:~~

~~((■) (i) In change rooms; ~~(AND~~~~

~~■) and~~

~~(ii) At the end of the work shift.~~

~~((-) (e) Make sure contaminated protective clothing that will be cleaned, laundered, or disposed of, is placed in a closed container located in the change room.~~

~~((■) Make sure the container prevents the release of inorganic arsenic.~~

~~((-) (f) Launder protective clothing:~~

~~((■) (i) At least weekly if employees work in areas where exposure monitoring results of inorganic arsenic are below an eight-hour time-weighted average concentration of 100 micrograms per cubic meter (µg/m³); ~~((OR~~~~

~~■) or~~

~~(ii) Daily if employees work in areas where either exposure monitoring results of inorganic arsenic are above an eight-hour time-weighted average concentration of 100 µg/m³ or when more frequent washing is needed to prevent skin irritation.~~

~~((-) (g) Maintain the effectiveness of PPE by repairing or replacing it, as needed:~~

~~((■) (i) Dispose of protective clothing if it will not be repaired.~~

~~((\*) (2) You must inform individuals who clean or launder protective clothing about the possible health effects associated with inorganic arsenic, including carcinogenic effects, by doing the following:~~

~~((-) (a) Provide the information in writing; ~~(AND~~~~

~~-) and~~

~~(b) Label containers of contaminated PPE with the following warning:~~

DANGER:

CONTAMINATED WITH INORGANIC ARSENIC.

MAY CAUSE CANCER.

DO NOT REMOVE DUST BY BLOWING OR SHAKING.

DISPOSE OF INORGANIC ARSENIC CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE OR FEDERAL REGULATIONS

~~((Prior to June 1, 2015, employers may include the following information on containers of protective clothing and equipment in lieu of the labeling requirements listed above in this section:~~

CAUTION:

~~Clothing contaminated with inorganic arsenic~~

~~Do not remove dust by blowing or shaking~~

~~Dispose of inorganic arsenic contaminated wash water as applicable local, state, or federal regulations require)~~

**Reference:** To see additional Personal protective equipment requirements go to the Safety and health core rules, chapter 296-800 WAC, and find the section titled, PPE, WAC 296-800-160.

AMENDATORY SECTION (Amending WSR 09-15-145, filed 7/21/09, effective 9/1/09)

**WAC 296-848-40045 Respirators.**

**IMPORTANT:**

~~((\*) 1. The requirements in this section are in addition to the requirements found in other chapters:~~

~~((-) a. Airborne contaminants, chapter 296-841 WAC.~~

~~((-) b. Respirators, chapter 296-842 WAC.~~

~~((You must~~

~~\*) (1) You must provide each employee with an appropriate respirator that complies with the requirements of this section, and require that employees use them in circumstances where exposure is above the permissible exposure limit (PEL), including any of the following circumstances:~~

~~((-) (a) Employees are in an exposure control area.~~

~~((-) (b) Feasible exposure controls are being put in place.~~

~~((-) (c) Where you determine that exposure controls are not feasible.~~

~~((-) (d) Feasible exposure controls do not reduce exposures to, or below, the PEL.~~

~~((-) (e) Emergencies.~~

~~((\*) (2) You must provide high-efficiency particulate air (HEPA) filters or N-, R-, or P-100 filters for powered air-purifying respirators (PAPRs) and negative-pressure air-purifying respirators.~~

~~((\*) (3) You must provide a powered air-purifying respirator (PAPR) to employees required to use respirators when:~~

~~((-) (a) The employee chooses to use this type of respirator or a licensed health care professional (LHCP) recommends this type of respirator in their written opinion~~((AND -); and~~~~

(b) It will provide proper protection.

((\*) (4) You must follow these additional specifications for inorganic arsenic compounds with significant vapor pressure such as arsenic trichloride and arsenic phosphide:

((-) (a) Select front- or back-mounted gas masks equipped with HEPA filters and acid gas canisters or any full facepiece supplied-air respirator, when concentrations are at or below 500 mg/m<sup>3</sup>.

((-) (b) Select for powered air-purifying respirators (PAPRs) and negative-pressure air-purifying respirators equipped with HEPA (or equivalent) filters and acid gas cartridges when concentrations are at or below 100.

((\*) (5) You must prohibit the use of half-facepiece respirators for protection against arsenic trichloride. This is because arsenic trichloride is corrosive and rapidly absorbed through the skin.

**Note:** When selecting air-purifying respirators for protection against inorganic arsenic, you'll need to consider whether other contaminants could be present at levels above permissible exposure limits and determine if a combination filter/gas-sorbent cartridge or canister is appropriate.

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-848-60010 Health information about inorganic arsenic.** ((\*) (1) You must make this section readily available to employees as required in Training, WAC 296-848-30005.

((\*) (2) You must provide this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-848-30030.

**Table 5**

**General Health Information About Inorganic Arsenic**

|   |
|---|
| <p><b>What is inorganic arsenic?</b></p> <p>In this chapter, "inorganic arsenic" means:</p> <ul style="list-style-type: none"> <li>- The element arsenic;</li> <li>- Arsenic-containing compounds that don't contain the element carbon;</li> <li>- Copper aceto-arsenite.</li> </ul> <p>Arsine is a gaseous inorganic arsenic compound not addressed by requirements in this chapter. It's addressed in a separate chapter, Respiratory hazards, chapter 296-841 WAC.</p>  |
| <p><b>How does inorganic arsenic get into my body?</b></p> <p>Inorganic arsenic enters your body when you:</p> <ul style="list-style-type: none"> <li>- Breathe in (<b>inhale</b>) airborne particles such as dusts, fume, sprays, or other aerosols that contain inorganic arsenic. You will also inhale inorganic arsenic particles when you smoke tobacco products that have become contaminated from contact with inorganic arsenic at work. Some compounds, including arsenic trichloride, can be inhaled as a vapor;</li> </ul> |

|   |
|---|
| <ul style="list-style-type: none"> <li>- Swallow (<b>ingest</b>) food, drink, cosmetics such as lip balm, sweat and other substances that become contaminated from contact with inorganic arsenic at work.</li> </ul> <p>Inorganic arsenic particles brought home on your clothes, shoes, or body can be inhaled or ingested by household members.</p> <p>Some inorganic arsenic compounds enter your body when <b>eye or skin contact</b> occurs. Arsenic trichloride is one example of a compound that is readily <b>absorbed</b> through the eyes and skin.</p>  |
| <p><b>What happens after inorganic arsenic enters my body?</b></p> <p>Once inorganic arsenic enters your body, some of it is changed into a less harmful organic form by the liver. Both the organic and inorganic forms leave your body in urine.</p> <p>Most of the arsenic will be gone within several days, although some will remain in your body for several months and even longer.</p>  |
| <p><b>Why is medical monitoring necessary?</b></p> <p>Although exposure to inorganic arsenic is associated with various health effects, the most serious health effects are <b>lung and skin cancer</b>. The medical monitoring requirements in this chapter are established to minimize your risk for these diseases.</p> <p>To learn more about the medical monitoring process, see Medical evaluation, WAC 296-848-30030.</p>  |
| <p><b>What health effects and symptoms are linked with exposure to inorganic arsenic?</b></p> <p>Exposure to inorganic arsenic is associated with various health effects ranging from <b>temporary local</b> effects such as skin irritation to <b>lasting systematic</b> effects due to gradual (chronic) or sudden (acute) poisoning. Such effects should not occur if the requirements in this chapter are followed.</p> <p><b>Skin Health Effects:</b></p> <p>Arsenic trioxide, arsenic trichloride, and other trivalent compounds can cause <b>skin irritation</b> from direct contact.</p> <ul style="list-style-type: none"> <li>- The following moist mucous membranes are most sensitive to irritation:             <ul style="list-style-type: none"> <li>■ Eye and inner eyelid (conjunctiva);</li> <li>■ Linings inside the nose, mouth, and respiratory system.</li> </ul> </li> <li>- Other sites most vulnerable irritation also include:             <ul style="list-style-type: none"> <li>■ Eyelids;</li> <li>■ Angles (the space between 2 planes) of the ears, nose, and mouth;</li> <li>■ Moist and macerated (softened by moisture) areas of skin;</li> <li>■ Wrists;</li> <li>■ Genitalia, if personal hygiene is poor.</li> </ul> </li> </ul> |

Inorganic arsenic is also capable of causing keratoses (**small corns or warts**), especially on palms and soles.

Trivalent arsenic compounds are **corrosive** to skin:

- Brief contact won't cause irritation, but prolonged contact causes localized engorgement (hyperemia) which later forms vesicular (blister-like) or pustular (pimple-like) eruptions.
- Exposure can create perforations (holes) in the nasal septum (the tissue dividing the nasal cavity in half).

Arsenic trioxide and arsenic pentoxide exposure have been linked to **skin sensitization** (acquired sensitivity or allergy) **and contact dermatitis** (inflammation due to allergic or irritant reaction).

**Acute Poisoning Effects:**

Acute poisoning is usually linked to ingestion, not inhalation, of inorganic arsenic. Cases of acute poisoning **rarely** occur in occupational settings and inhalation-related cases are exceedingly rare.

When acute poisoning is due to **ingestion**, the following gastrointestinal symptoms develop within 1/2 to 4 hours:

- Tightening (constriction) of the throat followed by difficulty or inability to swallow (dysphagia), pain in the region above the belly button (epigastric pain), vomiting, and watery diarrhea. Blood may appear in vomit and stools;
- Shock may develop due to severe fluid loss when the amount of inorganic arsenic swallowed is sufficiently high. Death can occur in 24 hours.

When acute poisoning is due to inhalation:

- The following symptoms develop first:
  - Cough;
  - Chest pain;
  - Shortness of breath (dyspnea);
  - Giddiness;
  - Headache;
  - Extreme general weakness.
- Gastrointestinal symptoms will follow.

**Chronic Poisoning Effects:**

Cases of chronic poisoning caused by **ingestion** are also rare. Symptoms are:

- Weight loss;
- Nausea and diarrhea alternating with constipation;
- Skin pigmentation and eruptions;
- Hair loss;
- Numbness in hands and feet, "pins and needles" sensation, muscle weakness, and other symptoms resulting from peripheral neuritis;

- Horizontal white lines (striations) on fingernails and toenails.

**Inhalation** of inorganic arsenic is the most common cause of chronic poisoning in occupational settings. Symptoms associated with this condition are divided into 3 phases.

- 1st phase, earliest symptoms:
  - Weakness;
  - Loss of appetite;
  - Some nausea;
  - Occasional vomiting;
  - Sense of heaviness in the stomach;
  - Some diarrhea.
- 2nd phase symptoms:
  - Inflammation of the eyes and inner eyelid (conjunctivitis);
  - Inflammation, accompanied by an abundant discharge from mucous membranes (a catarrhal state) of the nose, larynx, and respiratory passage;
  - Symptoms associated with the common cold (Coryza), hoarseness, and mild tracheobronchitis may occur;
  - Skin lesions are common (eczematoid and allergic in type). Perforations (holes) in the nasal septum (the tissue dividing the nasal cavity in half) are the most typical lesions of the upper respiratory tract.
- 3rd phase symptoms (related to peripheral neuritis):
  - Numbness in hands and feet, "pins and needles" sensation, muscle weakness.
  - In severe cases, motor paralysis occurs: Initially affecting the toe extensors and the peronei (outer portion of the lower leg).
  - "Wrist drop" or "foot drop" (resulting from paralysis of flexor muscles of feet and hands) **only occurs in the most severe cases.**

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-848-60020 Medical guidelines.** ((\*) (1) You must make this section readily available to employees as required in Training, WAC 296-848-30005.

((\*) (2) You must provide this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-848-30030.

**Table 6**  
**Medical Guidelines**  
**For Evaluating Employees With Exposure**

| <b>Part 1: DOSH's Requirements</b>  |
|---|
| <p>In addition to requiring employers to train employees and protect them from inorganic arsenic exposure, this chapter (the Arsenic rule) requires employers to monitor their employees' health with assistance from licensed health care professionals (LHCPs).</p> <ul style="list-style-type: none"> <li>For employees who will use respirators, the LHCP will also need to provide the employer with a written medical opinion clearing the employee for workplace respirator use.</li> </ul> <p>These guidelines were designed to support an informed partnership between the LHCP and the employer when monitoring the health of employees exposed to inorganic arsenic.</p> <p>The employer initiates this partnership by providing the LHCP with a copy of the chapter and other supporting information about the employee and job conditions. The LHCP can then become familiar with the medical monitoring requirements found in WAC 296-848-30030 and 296-848-30080, which address:</p> <ul style="list-style-type: none"> <li>Frequency and content for routine (initial and periodic) medical examinations and consultations;</li> <li>Emergency and other unplanned medical follow-up;</li> <li>Medical opinions;</li> <li>Medical records retention and content.</li> </ul> |
| <b>Part 2: Inorganic Arsenic Toxicology</b>   |
| <p><b>Health information about inorganic arsenic, WAC 296-848-50020</b> provides <b>basic information</b> about the health effects and symptoms associated with inorganic arsenic exposure.</p> <p>In addition, consider the following information:</p> <p><b><u>Acute Poisoning</u></b></p> <p>Exfoliative dermatitis and peripheral neuritis may develop in patients who survive health effects due to acute poisoning (by ingestion).</p> <p>Acute toxic symptoms of trivalent arsenical poisoning are caused by severe inflammation of the mucous membranes and greatly increased permeability of the blood capillaries.</p> <p><b><u>Acute and Chronic Poisoning</u></b></p> <p>In cases of acute and chronic poisoning, toxic effects to the myocardium (the middle layer of the heart) reported on EKG changes are now largely discounted and are attributed to electrolyte disturbances concomitant with arsenicalism.</p> <p>Arsenic has a depressant effect upon bone marrow, with disturbances of both red blood cell production (erythropoiesis) and myelopoiesis.</p>  |

### **Chronic Poisoning**

Cases of chronic poisoning caused by ingestion are generally linked to patients taking prescribed medications. However, sputum from inhaled inorganic arsenic can be swallowed in addition to other ingested inorganic arsenic due to hand-to-mouth transfer.

Skin lesions are usually melanotic and keratotic and may occasionally take the form of an intradermal cancer of the squamous cell type, but without infiltrative properties.

Chronic hepatitis and cirrhosis have been described. Liver damage is still debated and as yet the question is unanswered.

Polyneuritis may be the (~~prominent~~) **prominent** feature, but more frequently there are numbness and parasthenias of "glove and stocking" distribution. Horizontal white lines (striations) on the fingernails and toenails are commonly seen and are considered a diagnostic accompaniment of arsenical polyneuritis.

### **References:**

- Other sources for toxicology information include:
  - ToxFAQs™ and the Toxicological Profile for Arsenic. Both of these free documents are available from the Agency for Toxic Substances and Disease Registry (ATSDR) and can be obtained by:
    - Visiting  
<http://www.atsdr.cdc.gov/toxprofiles>  
OR
    - Calling 1-888-422-8737.
  - A variety of technical resources on arsenic, available from the National Institutes for Occupational Safety and Health (NIOSH) by visiting <http://www.cdc.niosh/topics/chemicals.html>

### **Part 3: Clinical Evaluation of Employees Exposed to Inorganic Arsenic**

#### **IMPORTANT:**

- When an employee will use a respirator during work, the LHCP will need to determine whether the employee can safely wear a respirator and what limitations, if any, apply.

#### **Guidance for Physical Examinations**

In addition to its immediate diagnostic usefulness, a patient's initial examination will provide a baseline for comparing future test results.

This chapter establishes the minimum content for medical examinations. Additional tests such as lateral and oblique X-rays or pulmonary function test may be useful.

You should also include palpation of superficial lymph nodes and a complete blood count when employees are exposed to any of the following compounds:

- Copper aceto-arsenite;
- Potassium arsenite;
- Sodium arsenite;
- Other arsenicals associated with lymphatic cancer.

Arsenic trioxide and other inorganic arsenical dusts don't give rise to radiological evidence or pneumoconiosis.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-848-500 Definitions.

#### NEW SECTION

**WAC 296-849-030 Definitions. Action level.** An airborne concentration of benzene of 0.5 parts per million (ppm) calculated as an eight-hour time-weighted average.

**Authorized personnel.** Individuals specifically permitted by the employer to enter the exposure control area to perform necessary duties, or to observe employee exposure evaluations as a designated representative.

**Benzene.** Liquid benzene, benzene vapor, and benzene in liquid mixtures and the vapors released by these liquids.

The chemical abstract service (CAS) registry number for benzene is 71-43-2. CAS numbers are internationally recognized and used on safety data sheets (SDSs) and other documents to identify substances. For more information, see <http://www.cas.org/about>.

**Breathing zone.** The space around and in front of an employee's nose and mouth, forming a hemisphere with a 6- to 9-inch radius.

**Bulk wholesale storage facility.** Any bulk terminal or bulk plant where fuel is stored before its delivery to wholesale customers.

**Container.** Any container, except for pipes or piping systems, that contains benzene. It can be any of the following:

- Barrel;
- Bottle;
- Can;
- Cylinder;
- Drum;
- Reaction vessel;
- Storage tank.

**Day.** Any part of a calendar day.

**Designated representative.** Any of the following:

- Any individual or organization to which an employee gives written authorization;
- A recognized or certified collective bargaining agent without regard to written employee authorization; **OR**
- The legal representative of a deceased or legally incapacitated employee.

**Emergency.** Any event that could or does result in the unexpected significant release of benzene. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

**Exposure.** The contact an employee has with benzene, whether or not protection is provided by respirators or other personal protective equipment (PPE). Contact can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Licensed health care professional (LHCP).** An individual whose legally permitted scope of practice allows him or her to provide some or all of the health care services required for medical evaluations.

**Permissible exposure limits (PELs).** PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are also specified in various WISHA rules found in other chapters. The PELs for benzene are the:

- Eight-hour time-weighted average (TWA<sub>8</sub>) of 1 part per million (ppm); **AND**
- Fifteen-minute short-term exposure limit (STEL) of 5 ppm.

**Short-term exposure limit (STEL).** An exposure limit averaged over a fifteen-minute period that must not be exceeded during any part of an employee's workday.

**Time-weighted average (TWA<sub>8</sub>).** An exposure limit averaged over an eight-hour period that must not be exceeded during an employee's workday.

**Vapor control systems.** Equipment that controls the vapor displaced when chemicals are loaded and unloaded from truck or storage tanks. It also processes or balances the vapor back into the truck or storage tanks.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-849-100 Scope.** This chapter applies to all occupational exposure to benzene.

#### **Definition:**

**Exposure ((is)).** The contact an employee has with benzene, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Exemptions:** This chapter does not apply to any of the following:

- Liquids, vapors, mixtures in containers or pipelines, and gas in natural gas processing plants when benzene content is 0.1% or less.
- Gasoline and other fuels containing benzene once they leave the final bulk wholesale facility and are being:
  - Transported;
  - Sold;
  - Distributed;
  - Stored;
  - Dispensed either:
    - Outdoors; or
- ((OR))
  - Indoors four hours or less a day.
- Used as a fuel.
- Oil and gas drilling, production, and servicing operations.
- Solid materials that contain only trace amounts of benzene.
- Coke ovens.

All requirements in this chapter will not apply to every workplace with an occupational exposure. The following will show you which requirements apply to your workplace.

**Step 1:** If any of your work tasks are listed in Table 1, follow Table 1.

- Go to Step 2a if you have additional work tasks or other exposures that are not covered in Table 1.

**Table 1**  
**Requirements That Apply to Specific Tasks**

| <b>If employees do any of the following:</b>  | <b>Then the only requirements in this chapter that apply to those tasks are:</b>  |
|---|---|
| Load and unload benzene at bulk storage facilities that use vapor control systems for all loading and unloading operations.       | <ul style="list-style-type: none"> <li>• The labeling requirement found in Preventive practices, WAC 296-849-11010.</li> </ul>  |
| Perform tasks around sealed transport pipelines carrying gasoline, crude oil, or other liquids containing more than 0.1% benzene. | <ul style="list-style-type: none"> <li>• This requirement found in Training, WAC 296-849-11050:                             <ul style="list-style-type: none"> <li>- Make sure training and information includes specific information on benzene for each hazard communication training topic. For the list of hazard communication training topics, go to WAC 296-901-14016, Employee information and training.</li> </ul> </li> </ul> |
| Work with, or around, sealed containers of liquids containing more than 0.1% benzene.   | <ul style="list-style-type: none"> <li>• Emergency requirements found in Medical evaluations, WAC 296-849-12030.</li> <li>• Requirements found in Medical records, WAC 296-849-12080.</li> <li>• Respirator requirements found in Respirators, WAC 296-849-13045.</li> </ul>  |

**Step 2a:** Follow requirements in the basic rules sections, WAC 296-849-11010 through 296-849-11090, for tasks **not** listed in Table 1.

- This includes completing an exposure evaluation, as specified in Exposure evaluations, WAC 296-849-11030, to:
  - Obtain employee fifteen-minute and eight-hour exposure monitoring results of airborne benzene;

**AND**

- Determine if employee exposure monitoring results are above, at, or below these values:

- Eight-hour time-weighted average (TWA<sub>8</sub>) . . . . . 1 parts per million (ppm).

- Fifteen-minute short-term exposure limit (STEL) . . . . . 5 ppm.

- Eight-hour action level (AL) . . . . . 0.5 ppm.

**Step 2b:** Use employee exposure monitoring results from Step 2a and follow Table 2 to find out which additional sections of this chapter apply to your workplace.

**Table 2**  
**Section Application**

| <b>If employee exposure monitoring results are:</b>  | <b>Then continue to follow the basic rules, and these additional requirements:</b>  |
|--|---|
| <ul style="list-style-type: none"> <li>• <b>Above</b> the TWA<sub>8</sub> or STEL</li> </ul>   | <ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-849-12010 through 296-849-12080; (<del>AND</del>) <u>and</u></li> <li>• Exposure control areas, WAC 296-849-13005 through 296-849-13045.</li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>At or below</b> the TWA<sub>8</sub> or STEL;</li> <li>• <b>AND</b></li> <li>• <b>At or above</b> AL</li> </ul> | <ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-849-12005 through 296-849-12080.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Below</b> the AL and STEL</li> </ul>   | <ul style="list-style-type: none"> <li>• No additional requirements apply.</li> </ul>   |

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-849-110 Basic rules.**

**Summary:**

**Your responsibility:**

To measure and minimize employee exposure to benzene.

**IMPORTANT:**

To determine which requirements to follow for your work tasks, go to Table 1 in the scope of this chapter, WAC 296-849-100.

~~((**Contents:**~~

~~Communication of hazards~~

~~WAC 296-849-11010.~~

~~Exposure control areas~~

~~WAC 296-849-11020.~~

~~Exposure evaluations~~

~~WAC 296-849-11030.~~

~~Personal protective equipment (PPE)~~

~~WAC 296-849-11040.~~

~~Training~~

~~WAC 296-849-11050.~~

~~Exposure monitoring observation~~

~~WAC 296-849-11065.~~

~~Notification~~

~~WAC 296-849-11070.~~

~~Exposure records~~

~~WAC 296-849-11090.))~~

| <u>You must meet the requirements...</u>   | <u>in this section:</u>  |
|--|--------------------------|
| <u>Communication of hazards</u>            | <u>WAC 296-849-11010</u> |
| <u>Exposure control areas</u>              | <u>WAC 296-849-11020</u> |
| <u>Exposure evaluations</u>                | <u>WAC 296-849-11030</u> |
| <u>Personal protective equipment (PPE)</u> | <u>WAC 296-849-11040</u> |
| <u>Training</u>                            | <u>WAC 296-849-11050</u> |
| <u>Exposure monitoring observation</u>     | <u>WAC 296-849-11065</u> |
| <u>Notification</u>                        | <u>WAC 296-849-11070</u> |
| <u>Exposure records</u>                    | <u>WAC 296-849-11090</u> |

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-849-11010 Communication of hazards.**

~~((You must:~~

•) Hazard communication—General.

((-) (1) Chemical manufacturers, importers, distributors and employers must comply with all requirements of the Hazard Communication Standard (HCS, WAC 296-901-140 for benzene).

((-) (2) In classifying the hazards of benzene at least the following hazards are to be addressed: Cancer; central nervous system effects; blood effects; aspiration; skin, eye, and respiratory tract irritation; and flammability.

((-) (3) Employers (~~shall~~) must include benzene in the hazard communication program established to comply with the HCS, WAC 296-901-140. Employers (~~shall~~) must ensure that each employee has access to labels on containers of benzene and to safety data sheets, and is trained in accordance with the requirements of HCS and WAC 296-849-11050.

~~((Prior to June 1, 2015, employers shall include the following legend or similar language on the labels or other appropriate forms of warning:~~

DANGER  
CONTAINS BENZENE  
CANCER HAZARD))

**Note:** You should keep containers tightly covered when not in use to prevent unnecessary exposure and accidental spills.

**References:** Additional requirements are found in other chapters as follows:

- For spills, leaks, or other releases of benzene, go to Emergency response, chapter 296-824 WAC.
- For labeling go to:
  - WAC 296-901-14012, Labels and other forms of warning(-); **AND**
  - WAC 296-901-14014, Safety data sheets.

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-849-11020 Exposure control areas.**

~~((You must:~~

•) You must establish temporary or permanent exposure control areas where airborne concentrations of benzene are above, or can be reasonably expected to be above, the permissible exposure limits (PELs) for benzene by doing all the following:

((-) (1) Post signs in accordance with WAC 296-849-11010.

((-) (2) Distinguish the boundaries of exposure control areas from the rest of the workplace in any way that minimizes employee access.

((-) (3) Allow only authorized personnel to enter exposure control areas.

**Note:**

- You may use permanent or temporary enclosures, caution tape, ropes, painted lines on surfaces, or other materials to visibly distinguish exposure control areas or separate them from the rest of the workplace.
- When distinguishing exposure control areas you should consider factors such as:
  - The level and duration of airborne exposure.
  - Whether the area is permanent or temporary.
  - The number of employees in adjacent areas.

**Reference:** If exposure control areas are established, go to Respirators, WAC 296-849-13045.

**AMENDATORY SECTION** (Amending WSR 07-05-062, filed 2/20/07, effective 4/1/07)

**WAC 296-849-11030 Exposure evaluations.**

**IMPORTANT:**

- When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

- Following this section will fulfill the requirements to identify and evaluate respiratory hazards found in chapter 296-841 WAC, Airborne contaminants.

~~((You must:~~

•) You must conduct an employee exposure evaluation to accurately determine airborne concentrations of benzene by completing Steps 1 through 7 of the exposure evaluation process, each time any of the following apply:

((-) (1) No evaluation has been conducted.

((■) You have up to thirty days to complete an evaluation once benzene is introduced into your workplace.

((-) (2) Changes have occurred in any of the following areas that may result in new or increased exposures:

((■) (a) Production.

((■) (b) Processes.

((■) (c) Exposure controls such as ventilation systems or work practices.

((■) (d) Personnel.

((-) (3) You have any reason to suspect new or increased exposure may occur.

((-) (4) Spills, leaks, or other releases have been cleaned up.

**Note:** As part of your exposure evaluation after cleanup, you will make sure exposure monitoring results have returned to pre-release levels.

**Exposure evaluation process.****IMPORTANT:**

- If you are evaluating employee exposures during cleaning and repair of barges and tankers that contained benzene:
  - Collect samples that effectively measure benzene concentrations that employees may be exposed to;

**AND**

- Skip to Step 7.

((★)) Following the exposure evaluation process is not necessary when you have documentation conclusively demonstrating benzene exposures for a particular operation and material cannot exceed the action level (AL) during any conditions reasonably anticipated.

((-)) (a) Documentation can be based on data or qualitative information, such as information about:

- ((■)) (i) The material.
- ((■)) (ii) How the material is handled.
- ((■)) (iii) The work conditions.

((-)) (b) Retain this documentation for as long as you rely on it.

**Step 1:** Identify all employees who have potential airborne exposure to benzene in your workplace.

**Step 2:** Identify operations where fifteen-minute exposures could exceed benzene's short-term exposure limit (STEL) of 5 parts per million (ppm).

- Include operations where it is reasonable to expect high, fifteen-minute exposures, such as operations where:
  - Tanks are opened, filled, unloaded, or gauged.
  - Containers or process equipment are opened.
  - Benzene is used as a solvent for cleaning.

**Note:** You may use monitoring devices such as colorimetric indicator tubes or real-time monitors to screen for activities where employee exposure monitoring results could be high.

**Step 3:** Select employees from those working in the operations you identified in Step 2 who will have their fifteen-minute exposures measured.

**Step 4:** Select employees from those identified in Step 1 who will have their eight-hour exposures monitored.

- Make sure the exposures of the employees selected represent eight-hour exposures for **all** employees identified at Step 1, including each job classification, work area, and shift.

**Note:** A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records required by this chapter in Exposure records, WAC 296-849-11090. This description can be created while completing Steps 3 through 6 of this exposure evaluation process.

**Step 5:** Determine how you will obtain employee monitoring results.

- Select and use a method that is accurate to  $\pm 25\%$ , with a confidence level of 95%.

**Note:**

- Here are examples of methods that meet this accuracy requirement:
  - OSHA Method 12 for air samples, found by going to <http://www.osha.gov/dts/sltc/methods/toc.html>.
  - NIOSH Method 1500, found by going to <http://www.cdc.gov/niosh/homepage.html> and link to the *NIOSH Manual of Analytical Methods*.

**Step 6:** Obtain employee exposure monitoring results by collecting air samples representing employees identified at Step 1.

- Collect fifteen-minute samples from employees selected at Step 3.
- Sample at least one shift representative of the eight-hour exposure for each employee selected at Step 4.
- Make sure samples are collected from each selected employee's breathing zone.
- Collecting area samples is permitted after emergency releases.

**Note:**

- You may use any sampling method that meets the accuracy specified in Step 5. Examples of these methods include:
  - Real-time monitors that provide immediate exposure monitoring results.
  - Equipment that collects samples that are sent to a laboratory for analysis.
- The following are examples of methods of monitoring representative of eight-hour exposures:
  - Collect one or more continuous samples, for example, a single eight-hour sample or four two-hour samples.
  - Take a minimum of five brief samples, such as fifteen-minute samples, during the work shift and at times selected randomly.
  - For work shifts longer than eight hours, monitor the continuous eight-hour portion of the shift expected to have the highest average exposure concentration.

**Step 7:** Have the samples you collected analyzed to obtain monitoring results representing eight-hour and fifteen-minute exposures.

- Go to the scope of this chapter, WAC 296-849-100, and compare employee exposure monitoring results to the **values** found in Step 2a and follow Step 2b to determine if additional sections of this chapter apply.

**Note:**

- You may contact your local WISHA consultant for help:
  - Interpreting data or other information.
  - Obtaining eight-hour or fifteen-minute employee exposure monitoring results.
  - To contact a WISHA consultant:
    - Go to another chapter, the Safety and health core rules, chapter 296-800 WAC, and find the resources section, and under "other resources," find service location for labor and industries.

**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-11040 Personal protective equipment (PPE).**

~~((You must:~~

★)) You must make sure employees use appropriate PPE as protection from skin or eye contact with liquid benzene.

**Note:** Harmful amounts of benzene can enter the body through skin and eye contact.

**Reference:** To see additional personal protective equipment requirements, go to the Safety and health core rules, chapter 296-800 WAC.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-849-11050 Training.**

~~((You must:))~~

•) (1) You must provide training and information to employees:

((-) (a) At the time of initial assignment to a work area where benzene is present;

AND

((-) (b) At least every twelve months after initial training for employees exposed to airborne concentrations at or above the action level (AL) of 0.5 parts per million (ppm).

(•) (2) You must make sure training and information includes all of the following:

((-) (a) Specific information on benzene for each hazard communication training topic. For the list of hazard communication training topics, go to WAC 296-901-14016, Employee information and training;

AND

((-) (b) An explanation of the contents of this chapter and guidance about where to find a copy of it;

AND

((-) (c) A description of the medical evaluation requirements of this chapter found in:

■ Medical evaluations, WAC 296-849-12030;

AND

■ Medical removal, WAC 296-849-12050.

**Reference:** To see additional training and information requirements in other chapters, go to the:

- Respirators rule, chapter 296-842 WAC, and find the Training section, WAC 296-842-16005.
- WAC 296-901-14016, Employee information and training.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-11065 Exposure monitoring observation.**

~~((You must:))~~

(1) You must provide affected employees and their designated representatives an opportunity to observe exposure monitoring during Step 6 of the exposure evaluation process found in Exposure evaluations, WAC 296-849-11030.

(2) You must make sure observers who enter areas with benzene exposure:

(•) (a) Are provided with and use the same protective clothing, respirators, and other personal protective equipment (PPE) that employees working in the area are required to use;

AND

(•) (b) Follow safety and health requirements that apply.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-11070 Notification.**

~~((You must:))~~

•) (1) You must provide written notification of exposure monitoring results to the employees represented by your

exposure evaluation within five business days after the monitoring results become known to you.

((-) (2) In addition, when employee exposure monitoring results are above a permissible exposure limit (PEL), provide written notification of all of the following within fifteen business days after these exposure monitoring results become known to you:

((■) (a) Corrective actions being taken and a schedule for completion;

AND

((■) (b) Any reason why exposures cannot be lowered to below the PELs for benzene.

**Note:**

- You can notify employees either individually or post the notifications in areas readily accessible to affected employees.
- Posted notification may need specific information that allows affected employees to determine which monitoring results apply to them.
- Notification may be in any written form, such as handwritten or email.
- Notification may be limited to the required information, such as exposure monitoring results.
- When notifying employees about corrective actions, your notification may refer them to a separate document that's available and provides the required information.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-11090 Exposure records.**

~~((You must:))~~

•) (1) You must establish and keep complete and accurate records for all exposure monitoring conducted under this chapter. Make sure the record includes at least:

((-) (a) The name, Social Security number, or other unique identifier, and job classification of the employee sampled and all other employees represented by the sampled employee.

((-) (b) The type of respirator worn, if any.

((-) (c) A description of the methods used to obtain exposure monitoring results.

((-) (d) A description of the procedure used to obtain representative employee exposure monitoring results.

((-) (e) The date, number, duration, and the result of each sample taken.

**Note:** It is useful to record any personal protective equipment worn by the employee, in addition to the type of respirator worn.

~~((You must:))~~

•) (2) You must keep exposure monitoring records for at least thirty years.

**Reference:**

- To see additional requirements for employee exposure records including access, and transfer requirements, go to another chapter, Employee medical and exposure records, chapter 296-802 WAC.
- Exposure monitoring records need to be kept longer than thirty years for employees participating in medical monitoring, go to Medical records, WAC 296-849-30080, found within this chapter.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-120 Exposure and medical monitoring.**

**Summary:**

**Your responsibility:**

To detect any significant changes in employee health and exposure monitoring results.

**IMPORTANT:**

These sections apply when employee exposure monitoring results are either:

- At or above the action level (AL) of 0.5 parts per million (ppm) for benzene;

**OR**

- Above either of the permissible exposure limits for benzene.

~~((**Contents**~~

~~Periodic exposure evaluations~~

~~WAC 296-849-12010.~~

~~Medical evaluations~~

~~WAC 296-849-12030.~~

~~Medical removal~~

~~WAC 296-849-12050.~~

~~Medical records~~

~~WAC 296-849-12080.))~~

| <u><b>You must meet the requirements...</b></u> | <u><b>in this section:</b></u> |
|---|--------------------------------|
| <u>Periodic exposure evaluations</u>            | <u>WAC 296-849-12010</u>       |
| <u>Medical evaluations</u>                      | <u>WAC 296-849-12030</u>       |
| <u>Medical removal</u>                          | <u>WAC 296-849-12050</u>       |
| <u>Medical records</u>                          | <u>WAC 296-849-12080</u>       |

AMENDATORY SECTION (Amending WSR 05-13-152, filed 6/21/05, effective 8/1/05)

**WAC 296-849-12010 Periodic exposure evaluations.**

**Exemption:** Periodic exposure evaluations aren't required if exposure monitoring results conducted to fulfill requirements in Exposure evaluation, WAC 296-849-11030, are below the action level (AL) and short-term exposure limit (STEL).

~~((**You must:**~~

•) You must obtain employee exposure monitoring results as specified in Table 3, by repeating Steps 3, 4, 6, and 7 of the exposure evaluation process found within this chapter, in Exposure evaluations, WAC 296-849-11030.

**Note:** If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you can limit sample collection to the work shift with higher exposures and use results to represent all employees performing the operation on other shifts.

**Table 3**  
**Periodic Exposure Evaluation Frequencies**

| <b>If exposure monitoring results</b>  | <b>Then</b>   |
|--|---|
| Are between the:<br>- AL of 0.5 ppm<br><b>AND</b><br>- Eight-hour time-weighted average (TWA <sub>8</sub> ) of 1 ppm   | Conduct additional exposure evaluations at least every twelve months for the employees represented by the monitoring results. |
| Are above the TWA <sub>8</sub>   | Conduct additional exposure evaluations at least every six months for the employees represented by the monitoring results.    |
| Have decreased to a concentration between the AL and TWA <sub>8</sub> ;<br><b>AND</b><br>The decrease is demonstrated by two consecutive exposure evaluations, made at least seven days apart. | You may <b>decrease</b> your evaluation frequency to every twelve months for employees represented by the monitoring results. |
| Are above the short-term exposure limit (STEL) of 5 ppm  | Repeat as often as necessary to evaluate employee exposure.   |
| Have decreased to below the AL and the STEL<br><b>AND</b><br>The decrease is demonstrated by two consecutive evaluations, made at least seven days apart.                                      | You may <b>stop</b> periodic exposure evaluations for employees represented by the monitoring results.                        |

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-849-12030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in Respirators, chapter 296-842 WAC.

~~((**You must:**~~

•) (1) You must provide the relevant medical follow-up specified in Tables 4 and 5 to any employee exposed to benzene during an emergency.

(•) (2) You must make medical evaluations available to current employees who meet the following criteria:

(-) (a) Potential or actual exposure to benzene at or above the action level (AL) for at least thirty days in any twelve-month period.

((-)) (b) Potential or actual exposure to benzene at or above either permissible exposure limit (PEL) for at least ten days in a twelve-month period.

((-)) (c) Past exposure to concentrations above 10 ppm benzene for at least thirty days in a twelve-month period before November 11, 1988.

((-)) (d) Current or past work as a tire building machine operator using solvents containing more than 0.1% benzene during tire building operations.

~~((You must~~

•) (3) You must make medical evaluations available at no cost to employees((-

-Pay)); paying all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours;

((•) (4) You must make medical evaluations available at reasonable times and places;

((•) (5) You must make medical evaluations available by completing Steps 1 through 6 of the medical evaluation process for each employee covered.

**Note:** • Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by benzene are not excluded from receiving a separate medical evaluation for a respirator use.  
• If employers discourage participation in medical monitoring for health effects caused by benzene, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy.

**Helpful tool:**

**Declination form for nonemergency related medical evaluations.**

• You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to benzene.

**Medical evaluation process:**

**Step 1:** Identify employees who qualify, as stated above, for medical evaluations.

**Step 2:** Make medical evaluations available for employees identified in Step 1 at the following times:

• Initially, before the employee starts a job or task assignment where benzene exposure will occur.

• Every twelve months from the initial medical evaluation.

• Whenever the employee develops signs or symptoms commonly associated with toxic benzene exposure.

• After benzene exposure from an emergency.

**Step 3:** Select a licensed health care professional (LHCP) who will conduct or supervise medical evaluations and make sure:

• Individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution, if they are not licensed physicians;

AND

• Your LHCP uses an accredited laboratory, such as one accredited by a nationally or state-recognized organization, to conduct laboratory tests.

**Step 4:** Make sure the LHCP receives all of the following before the medical evaluation is performed:

• A copy of this chapter.

• A description of the duties of the employee being evaluated and how these duties relate to benzene exposure.

• The anticipated or representative exposure monitoring results for the employee being evaluated.

• A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.

• Information from previous employment-related examinations when this information is not available to the examining LHCP.

• Instructions that the written opinions the LHCP provides, be **limited to** the following information:

- Specific records, findings, or diagnosis relevant to the employee's ability to work around benzene.

- The occupationally relevant results from examinations and tests.

- A statement about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to benzene.

- Any recommended limitations for benzene exposure.

- Whether or not the employee can use respirators and any recommended limitations for respirator or other PPE use.

- A statement that the employee has been informed of medical results and medical conditions caused by benzene exposure requiring further explanation or treatment.

**Step 5:** Provide the medical evaluation to the employee. Make sure it includes the content listed in Table 4, Content of medical evaluations, and Table 5, Medical follow-up requirements.

**Step 6:** Obtain the LHCP's written opinion for each employee's medical evaluation and give a copy to the employee within fifteen days of the evaluation date.

• Make sure the written opinion is limited to the information specified for written opinions in Step 4.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**IMPORTANT:**

These tables apply when conducting medical evaluations, including medical follow-up for employees exposed to benzene during emergencies.

**Table 4**

**Content of Medical Evaluations**

| When conducting       | Include   |
|-----------------------|---|
| An initial evaluation | <ul style="list-style-type: none"> <li>• A detailed history including:               <ul style="list-style-type: none"> <li>- Past work exposure to benzene or other hematological toxins;</li> <li>- Exposure to marrow toxins outside of current employment;</li> </ul> </li> </ul> |

| When conducting    | Include  |
|--------------------|--|
|                    | <ul style="list-style-type: none"> <li>- Exposure to ionizing radiation;</li> <li>- Family history of blood dyscrasias including hematological neoplasms;</li> <li>- History of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, and abnormal function of formed blood elements;</li> <li>- History of renal or liver dysfunction;</li> <li>- History of medications routinely taken.</li> <li>• A complete physical examination:</li> <li>- Include a pulmonary function test and specific evaluation of the cardiopulmonary system <b>if</b> the employee is required to use a respirator for at least thirty days a year.</li> <li>• A complete blood count including a:                         <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> <li>- Quantitative thrombocyte count;</li> <li>- Hematocrit;</li> <li>- Hemoglobin;</li> <li>- Erythrocyte count and indices (MCV, MCH, MCHC).</li> </ul> </li> <li>• Additional tests the examining LHCP determines are necessary based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> |
| Annual evaluations | <ul style="list-style-type: none"> <li>• An updated medical history covering:                         <ul style="list-style-type: none"> <li>- Any new exposure to potential marrow toxins;</li> <li>- Changes in medication use;</li> <li>- Any physical signs associated with blood disorders.</li> </ul> </li> </ul>  |

| When conducting   | Include   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• A complete blood count including a:                         <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> <li>- Quantitative thrombocyte count;</li> <li>- Hematocrit;</li> <li>- Hemoglobin;</li> <li>- Erythrocyte count and indices (MCV, MCH, MCHC).</li> </ul> </li> <li>• Additional tests that the examining LHCP determines necessary, based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• A pulmonary function test and specific evaluation of the cardiopulmonary system every three years if the employee is required to use a respirator for at least thirty days a year.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> |
| Evaluations triggered by employee signs and symptoms commonly associated with the toxic effects of benzene exposure | <ul style="list-style-type: none"> <li>• An additional medical examination that addresses elements the examining LHCP considers appropriate.</li> </ul>   |
| Evaluations triggered by employee exposure during an emergency  | <ul style="list-style-type: none"> <li>• A urinary phenol test performed on the exposed employee's urine sample within seventy-two hours of sample collection.</li> <li>- The urine sample must be collected at the end of the work shift associated with the emergency;</li> <li>- The urine specific gravity must be corrected to 1.024.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> <p><b>Reference:</b><br/>Employees who are not covered by medical evaluation requirements in this chapter may be covered by medical evaluation</p>  |

| When conducting | Include   |
|-----------------|---|
|                 | requirements in other chapters such as Emergency response, chapter 296-824 WAC. |

**Table 5  
Medical Follow-up Requirements**

| If   | Then   |
|--|--|
| <ul style="list-style-type: none"> <li>The <b>complete blood count test</b> result is normal.</li> </ul>   | <ul style="list-style-type: none"> <li>No further evaluation is required.</li> </ul>   |
| <ul style="list-style-type: none"> <li>The <b>complete blood count test</b> shows any of the following abnormal conditions:                             <ul style="list-style-type: none"> <li>A leukocyte count less than 4,000 per mm<sup>3</sup> or an abnormal differential count;</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>A thrombocyte (platelet) count that is either:                             <ul style="list-style-type: none"> <li>More than 20% below the employee's most recent values;</li> </ul> </li> <li>Outside the normal limit (95% C.I.) according to the laboratory;</li> <li>The hematocrit or hemoglobin level is either of the following, and can not be explained by other medical reasons:                             <ul style="list-style-type: none"> <li>Below the normal limit (outside the 95% C.I.), as determined by the laboratory for the particular geographical area;</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Repeat the complete blood count within two weeks:                             <ul style="list-style-type: none"> <li>If the abnormal condition persists, refer the employee to a hematologist or an internist for follow-up medical examination and evaluation, unless the LHCP has good reason to believe it is unnecessary;</li> <li>The hematologist or internist will determine what follow-up tests are necessary; <u>and</u></li> </ul> </li> <li>Follow the requirements found in Medical removal, WAC 296-849-12050.</li> </ul> |

| If  | Then  |
|---|---|
| <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>Persistently decreasing compared to the employee's preexposure levels.</li> </ul> |   |
| Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels less than 75 mg/L.  | <ul style="list-style-type: none"> <li>No further evaluation is required.</li> </ul>  |
| Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels equal or more than 75 mg/L.                                   | <ul style="list-style-type: none"> <li>Provide a complete blood count monthly for three months. Include a:                             <ul style="list-style-type: none"> <li>Leukocyte count with differential;</li> <li>Thrombocyte count;</li> <li>Erythrocyte count; <u>and</u> <del>((AND))</del></li> </ul> </li> <li>If any of the abnormal conditions previously listed in this table for complete blood count results are found:                             <ul style="list-style-type: none"> <li>Provide the employee with periodic examinations, if directed by the LHCP; <u>and</u> <del>((AND))</del></li> <li><b>Refer the employee</b> to a hematologist or an internist for follow-up medical examination and evaluation unless the LHCP has good reason to believe a referral is unnecessary; <u>and</u> <del>((AND))</del></li> <li>Follow the requirements found in Medical removal, WAC 296-849-12050; <u>and</u> <del>((AND))</del></li> <li>The hematologist or internist will determine what follow-up tests are necessary.</li> </ul> </li> </ul> |

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-12050 Medical removal.**

**IMPORTANT:**

This section applies when an employee is referred to a hematologist or an internist for follow-up medical examination and evaluation required in Table 5, Medical follow-up requirements found in Medical evaluations, WAC 296-849-12030.

~~((You must:))~~

(1) You must remove the employee from areas where benzene exposure is above the action level (AL) by doing either of the following:

(\*) (a) Transfer the employee to a job currently available that:

(-) (i) The employee qualifies for, or could be trained for in a short period of time;

**AND**

(-) (ii) Will keep the employee's exposure to benzene as low as possible and never above the AL;

**OR**

(\*) (b) Remove the employee from the workplace until either:

(-) (i) A job becomes available that:

■ The employee qualifies for, or could be trained for in a short period of time;

**AND**

■ Will keep the employee's exposure to benzene as low as possible and never above the AL;

**OR**

(-) (ii) The employee is returned to work or permanently removed from benzene exposure as determined by completing the medical evaluation process for removed employees.

(2) You must maintain the employee's current pay rate, seniority, and other benefits.

**Note:** If you must provide medical removal benefits and the employee will receive compensation for lost pay from other sources, you may reduce your medical removal benefit obligation to offset the amount provided by these sources. Examples of other sources are:

- Public or employer-funded compensation programs;
- Employment by another employer, made possible by the employee's removal.

~~((You must:))~~

(3) You must complete Steps 1 through 4 of the medical evaluation process for removed employees, **within six months** of the date the licensed health care professional (LHCP) refers an employee to a hematologist or internist for follow-up.

(\*) (a) Make sure all examinations and evaluations are provided at no cost to the employee.

(-) (b) Make examinations and evaluations available at reasonable times and places;

**AND**

(-) (c) Pay for travel costs and wages, including any time spent outside of the employee's normal work hours.

**Medical evaluation process for removed employees:**

**Step 1:** Make sure the following is provided to the hematologist or internist:

- The information you provided to the LHCP in Step 4 of Medical evaluations, WAC 296-849-12030;
- The employee's medical record as described in Medical records, WAC 296-849-12080.

**Note:** The examining LHCP may provide this information for you.

**Step 2:** Provide the employee an examination and evaluation by a hematologist or internist.

- When the examination and evaluation is completed, you and the employee must be informed, in writing, of the referring LHCP's decision to continue **or** end the employee's removal from benzene exposure.

- Include the following in the LHCP's decision if removal of the employee continues:

- The expected time period for removal to continue;

**AND**

- Requirements for future medical examinations to review the decision.

- If the LHCP recommends the employee **end removal** and return to the usual job with benzene exposure, **skip Steps 3 and 4.**

**Step 3:** Provide further medical examination and evaluation to the employee when the LHCP's decision from Step 2 informs you that medical removal must continue.

**Note:** • During this step the LHCP, in consultation with the hematologist or internist, decides whether the employee:

- May return to their usual job;

**OR**

- Should be permanently removed from exposures that exceed the AL.

- If the LHCP recommends the employee return to their usual job, skip Step 4.

**Step 4:** When the LHCP recommends permanent removal for the employee, make sure all the following conditions are met:

- The employee has an opportunity to transfer to another job that is currently available (or will become available);

- The job is one the employee qualifies for, or could be trained for in a short period of time;

- There is no reduction in the employee's current pay rate, seniority, and other benefits;

- The employee's benzene exposures will be as low as possible, but never more than the AL.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-12080 Medical records.**

**IMPORTANT:**

This section applies when a medical evaluation is performed, or any time a medical record is created for an employee exposed to benzene.

~~((You must:))~~

(\*) (1) You must establish and maintain complete and accurate medical records for each employee receiving a medical evaluation and make sure the records include **all** the following:

((-)) (a) The employee's name and Social Security number, or other unique identifier;

((-)) (b) A copy of the licensed health care professional's (LHCP's) written opinions including written decisions and recommendations for the employee removed from exposure;

((-)) (c) A copy of the information required in Step 4 of the medical evaluation process, found in WAC 296-849-12030, **except** for the copy of this chapter and the appendices listed.

((\*) (2) You must maintain medical evaluation records for the duration of employment plus thirty years.

**Note:** Your medical provider may keep these records for you. Other medical records such as an employee's medical history, need to be kept as a confidential record by the medical provider and accessed only with the employee's consent.

**Reference:** To see additional employee medical record requirements, including access and transfer requirements, go to another chapter, Employee medical and exposure records, chapter 296-802 WAC.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-130 Rules for exposure control areas.**

**Summary:**

**Your responsibility:**

To protect employees from exposure to benzene by using feasible exposure controls and appropriate respirators.

**IMPORTANT:**

These sections apply when existing or potential employee exposure monitoring results are above either of the following permissible exposure limits (PELs):

- The eight-hour time-weighted average (TWA<sub>8</sub>) of 1 part per million (ppm);

**OR**

- The fifteen-minute short-term exposure limit (STEL) of 5 ppm.

~~((Contents:~~

~~Exposure control plan~~

~~WAC 296-849-13005.~~

~~Exposure controls~~

~~WAC 296-849-13020.~~

~~Respirators~~

~~WAC 296-849-13045.))~~

| <u>You must meet the requirements...</u> | <u>in this section:</u>  |
|--|--------------------------|
| <u>Exposure control plan</u>             | <u>WAC 296-849-13005</u> |
| <u>Exposure controls</u>                 | <u>WAC 296-849-13020</u> |
| <u>Respirators</u>                       | <u>WAC 296-849-13045</u> |

AMENDATORY SECTION (Amending WSR 07-05-062, filed 2/20/07, effective 4/1/07)

**WAC 296-849-13005 Exposure control plan.**

**Exemption:** This section does not apply to the cleaning and repair of barges and tankers that contained benzene.

~~((You must:~~

~~\*) (1) You must establish and implement a written exposure control plan for exposure control areas that include a schedule for developing and implementing feasible exposure controls to reduce benzene exposure to, or below, the PELs.~~

**Note:** Respirators and other personal protective equipment (PPE) help protect employees from exposures, but are **not** substitutes for feasible exposure controls.

~~((You must:~~

~~\*) (2) You must review and update your exposure control plan as needed, based on the most recent exposure evaluation results.~~

~~\*) (3) You must provide a copy of your exposure control plan to affected employees and their designated representatives when they ask to review or copy it.~~

AMENDATORY SECTION (Amending WSR 07-05-062, filed 2/20/07, effective 4/1/07)

**WAC 296-849-13020 Exposure controls.**

**IMPORTANT:**

Respirators and other personal protective equipment (PPE) do **not** substitute for feasible exposure controls.

~~((You must:~~

~~\*) You must use feasible exposure controls to reduce exposures, as specified in Table 6.~~

**Table 6  
Exposure Control Requirements**

| <b>If:</b>  | <b>Then you must use feasible controls to:</b>  |
|---|---|
| You have operations where employees clean and repair barges or tankers which have contained benzene | Keep all employee exposure concentrations below 10 parts per million (ppm).   |
| You can document that benzene is used for less than thirty days a year in the workplace             | Reduce eight-hour employee exposure monitoring results to a time-weighted average of 10 ppm or less.<br><b>Note:</b> If employee exposure monitoring results are between 1 and 10 ppm, you are permitted to use respirators or a combination of respirators and feasible controls to protect employees. |
| Employees are exposed to benzene above a PEL for at least thirty days a year                        | Reduce eight-hour employee exposure concentrations to the TWA <sub>8</sub> of 1 ppm or less;<br><b>AND</b>  |

|            |  |
|------------|--|
| <b>If:</b> | <b>Then you must use feasible controls to:</b>                                       |
|            | Reduce fifteen-minute employee exposure concentrations to the STEL of 5 ppm or less. |

AMENDATORY SECTION (Amending WSR 09-15-145, filed 7/21/09, effective 9/1/09)

**WAC 296-849-13045 Respirators.**

**IMPORTANT:**

These requirements are in addition to the requirements found in other chapters:

- Airborne contaminants, chapter 296-841 WAC;
- Respirators, chapter 296-842 WAC.

~~((You must:~~

•) (1) You must provide each employee with an appropriate respirator that complies with the requirements of this section, and require that employees use them in circumstances where exposure is above either permissible exposure limit (PEL) for benzene, including any of the following circumstances:

- ((-) (a) Employees are in an exposure control area;
- ((-) (b) Feasible exposure controls are being put in place;
- ((-) (c) Where you determine that exposure controls are not feasible;
- ((-) (d) Feasible exposure controls do not reduce exposures to, or below, a PEL;
- ((-) (e) Emergencies.
- (\*) (2) You must provide employees, for escape, either:
  - ((-) (a) Any full-facepiece organic vapor gas mask;

**OR**

((-) (b) Any full-facepiece self-contained breathing apparatus (SCBA);

**OR**

((-) (c) A hood-style SCBA that operates in positive-pressure mode.

(\*) (3) You must use organic vapor cartridges or canisters on powered air-purifying respirators (PAPRs) and negative-pressure air-purifying respirators.

(\*) (4) You must use only chin-style canisters on full-facepiece gas masks.

**Note:** When other contaminants present a hazard, then you will need to use a filter or other combination sorbent cartridge that removes the additional contaminants.

~~((You must:~~

•) (5) You must make sure respirator cartridges or canisters are replaced at the beginning of each work shift, or sooner if their service life has expired.

(\*) (6) You must make sure canisters on air-purifying respirators have a minimum service life of four hours when tested under these conditions:

- ((-) (a) A benzene concentration of 150 ppm;
- ((-) (b) A temperature of 25°C;
- ((-) (c) A relative humidity of 85%;
- ((-) (d) A flow rate of one of the following:

((\*) (i) 64 liters per minute (lpm) for nonpowered air-purifying respirators;

((\*) (ii) 115 lpm for **tight-fitting** PAPRs;

((\*) (iii) 170 lpm for **loose-fitting** PAPRs.

(\*) (7) You must provide an employee a respirator with low breathing resistance, such as a PAPR or an air-line respirator when the:

((-) (a) Employee cannot use a negative-pressure respirator;

**OR**

((-) (b) A licensed health care professional's (LHCP's) written opinion allows this type of respirator.

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-849-60010 Health information about benzene.**

(\*) (1) You must include an explanation of the contents of this section to employees as required in Training, WAC 296-849-11050.

(\*) (2) You must provide a copy of this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-849-12030.

**Table 7**

**General Health Information About Benzene**

|   |
|---|
| <b>What is benzene?</b>   |
| Benzene is a clear, colorless liquid with a pleasant, sweet odor. It evaporates into air very quickly. The odor of benzene does not provide adequate warning of its hazard.<br><br>In this chapter, "benzene " means:<br><br>- Liquid benzene, benzene vapor, and benzene in liquid mixtures and the vapor released by these liquids. The CAS Registry Number that identifies benzene is 71-43-2.<br><br>Synonyms for benzene include: Benzol, benzole, coal naphtha, cyclohexatriene, phenyl hydride, pyrobenzol.<br><br>Benzin, petroleum benzin, and benzine are chemicals that do <b>not</b> contain benzene. |
| <b>How am I exposed to benzene?</b>   |
| Benzene exposure occurs when you:<br><br>- Breathe in ( <b>inhale</b> ) vapor or liquid particles (from actions such as spraying or splashing) containing benzene;<br><br>- Have skin or eye contact with liquid or vapor containing benzene. Benzene is absorbed through the skin. Absorption occurs more rapidly with abraded skin or when benzene is present in solvents (as an ingredient or contaminant) which are readily absorbed;<br><br>- Swallow ( <b>ingest</b> ) benzene.   |

|   |
|---|
| <p><b>What happens after I'm exposed to benzene?</b></p> <p>Some benzene that enters your body will be absorbed into the bloodstream. Once in the bloodstream, benzene travels throughout your body and can be temporarily stored in the bone marrow and fat.</p> <p>Benzene is converted to products, called metabolites, in the liver and bone marrow. Some of the harmful effects of benzene exposure are caused by these metabolites.</p> <p>Most of the metabolites of benzene leave the body in the urine within 48 hours after exposure.</p>   |
| <p><b>Why is medical monitoring necessary?</b></p> <p>Medical monitoring is necessary to detect changes in your body's blood-forming system, including the bone marrow. These changes can occur due to repeated or prolonged, unprotected exposure to benzene, even at relatively low concentrations. Such changes can lead to various blood disorders, ranging from anemia to <b>leukemia</b>, an irreversible, fatal disease. Many of these disorders may occur without symptoms.</p> <p>Benzene is classified as a confirmed <b>human carcinogen</b> (Group 1) by the International Agency for Research on Cancer (IARC).</p> <p>To learn more about the medical monitoring process, see Medical evaluation, WAC 296-849-12030.</p>  |
| <p><b>What health effects are linked to benzene exposure?</b></p> <p>Unprotected exposure to benzene is associated with various health effects including symptoms and diseases associated with either short-term (<b>acute</b>) exposure or long-term exposure (<b>chronic</b>).</p> <p><b>Acute effects from inhaling high vapor concentrations:</b></p> <p>An <b>initial</b> stimulatory effect on the central nervous system (brain and spinal cord) can occur, characterized by exhilaration, nervous excitation (irritability), and/or giddiness. This may be followed by a period of depression, drowsiness, or fatigue.</p> <p>Headache, dizziness, nausea, or a feeling of intoxication may develop.</p> <p>A sensation of tightness in the chest may occur, accompanied by breathlessness. Ultimately the victim may lose consciousness.</p> <p>In severe inhalation cases, tremors, convulsions, and death may follow due to respiratory paralysis or circulatory collapse in a few minutes to several hours.</p> <p><b>Acute effects from inhaling liquid benzene:</b></p> <p>Aspiration of small amounts of liquid benzene immediately causes pulmonary edema (excessive accumulation of fluid in lung tissues) and hemorrhage of pulmonary tissue.</p> <p><b>Skin contact:</b></p> <p>Direct contact may cause redness (erythema).</p> |

|   |
|---|
| <p>Benzene has a defatting action on skin. Repeated or prolonged contact may result in any of the following:</p> <ul style="list-style-type: none"> <li>- Primary irritation;</li> <li>- Dry skin;</li> <li>- Scaling dermatitis (inflammation);</li> <li>- Development of secondary skin infections.</li> </ul> <p><b>Effects on the eyes and mucous membranes:</b></p> <p>Localized effects from vapor or liquid contact on the eye are slight. High concentrations of benzene are irritating to eyes (causing a stinging sensation) and mucous membranes of the nose and respiratory tract.</p> <p><b>Effects due to prolonged exposure:</b></p> <p>The blood forming (hematopoietic) system is the main target for benzene's toxic effects. These effects can vary from anemia to <b>leukemia</b>, an irreversible, fatal disease. Many of the toxic effects may occur without symptoms.</p> <p>Most importantly, prolonged exposure to <b>small</b> quantities of benzene vapor is damaging to the blood forming system. This damage has occurred at concentrations of benzene that may not cause irritation of mucous membranes or unpleasant sensory effects.</p> <p><b>Early signs and symptoms</b> are varied and often not readily noticed and nonspecific. These include:</p> <ul style="list-style-type: none"> <li>- Subjective complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs;</li> <li>- Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a subjective complaint of shortness of breath and excessive tiredness.</li> </ul> <p><b>Other symptoms may occur as the condition progresses:</b></p> <ul style="list-style-type: none"> <li>- Bleeding from the nose, gums, or mucous membranes;</li> <li>AND</li> <li>- Development of purpuric spots (small bruises).</li> </ul> |
|---|

AMENDATORY SECTION (Amending WSR 07-03-153, filed 1/23/07, effective 6/1/07)

**WAC 296-849-60020 Medical guidelines for benzene.**

((\*) (1) You must include an explanation of the contents of this section to employees as required in Training, WAC 296-849-11050.

((\*) (2) You must provide a copy of this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-849-12030.

**Table 8**  
**Medical Guidelines For Evaluating Employees Exposed to Benzene**

**Part 1: Becoming familiar with medical requirements in this chapter**

In addition to requiring employers to train employees and protect them from exposure to benzene, this chapter (the Benzene rule) requires employers to monitor their employees' health with assistance from licensed health care professionals (LHCPs).

- For employees who will use respirators, the LHCP will also need to provide the employer with a written medical opinion clearing the employee for workplace respirator use.

These guidelines were designed to support an informed partnership between the LHCP and the employer when monitoring the health of employees exposed to benzene.

The employer initiates this partnership by providing the LHCP with a copy of the chapter and other supporting information about the employee and job conditions. The LHCP can then become familiar with the medical monitoring requirements found in WAC 296-849-12030 through 296-849-12080, which address:

- Frequency and content for routine (initial and periodic) medical examinations and consultations;
- Emergency and other unplanned medical follow-up;
- Medical opinions;
- Employee medical removal;
- Medical records retention and content.

#### **Part 2: Benzene toxicology**

Benzene is primarily an inhalation hazard. Systematic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, has been frequently reported among the first signs.

**Health information about benzene, WAC 296-848-50010**, provides **basic information** about the health effects and symptoms associated with benzene exposure.

#### **Reference:**

- Other sources for toxicology information include:
  - ToxFQA<sup>TM</sup> and the Toxicological Profile for Benzene. This free document is available from the Agency for Toxic Substances and Disease Registry (ATSDR) and can be obtained by:
    - Visiting  
<http://www.atsdr.cdc.gov/toxprofiles>
    - OR
    - Calling 1-888-422-8737
  - A variety of technical resources on benzene from the National Institutes for Occupational Safety and Health (NIOSH) by visiting  
<http://www.cdc.niosh/topics/chemicals.html>

#### **Part 3: Treatment of acute toxic effects**

When providing assistance to someone contaminated with benzene, make sure **you** are adequately protected and do not risk being overcome by benzene vapor.

Remove the patient from exposure immediately.

Give oxygen or artificial resuscitation, if indicated.

Flush eyes, wash skin if contaminated and remove all contaminated clothing.

Recovery from mild exposures is usually rapid and complete. Symptoms of intoxication may persist following severe exposures.

#### **Part 4: Preventive considerations**

The principal effects of benzene exposure which form the basis for the requirements in this chapter are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifesting clinically as pancytopenia, aplastic anemia, and leukemia.

Consequently, the medical monitoring program is designed to observe, on a regular basis, blood indices for early signs of these effects, and although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes make consistent surveillance for leukemia, as well as other hematopoietic effects, essential.

Symptoms and signs of benzene toxicity can be nonspecific. Only a detailed history and appropriate investigative procedure will enable a physician to rule out or confirm conditions that place the employee at increased risk.

Bone marrow may appear normal, aplastic, or hyperplastic, and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture.

The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased and identification or correlation with benzene exposure must be sought out in the occupational history.

There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.

- This chapter specifies that blood abnormalities that persist must be referred "unless the physician has good reason to believe such referral is unnecessary." Examples of conditions that could make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality.
- Blood values that require referral to a hematologist or internist are noted under Part 5: Hematology guidelines.

**Part 5: Hematology guidelines**

The following guidelines are established to assist the examining LHCP with regard to which laboratory tests are necessary and when to refer an employee to the specialist. A minimum battery of tests is to be performed using strictly standardized methods.

**Basic tests**

- The following must be determined by an accredited laboratory:
  - Red and white cell counts;
  - Platelet counts;
  - White blood cell differential;
  - Hematocrit;
  - Red cell indices.
- The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex, and therefore should be determined by the accredited laboratory in the specific area where the tests are performed.
- Either a decline from an absolute normal or an individual's baseline to a subnormal value or a rise to a supra-normal value, are indicative of potential toxicity, particularly if all blood parameters decline.
  - The normal total white blood count is approximately 7,200/mm<sup>3</sup> plus or minus 3,000;
  - For cigarette smokers the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory;
  - In addition, infection, allergies and some drugs may raise the white cell count;
  - The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.
- Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and **require prompt consultation with a specialist**, namely:
  - Thrombocytopenia;
  - A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of trend highlights the need to compare an individual's test results to baseline and/or previous periodic tests;
  - A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation,

whereas if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation;

- Anemia, leukopenia, macrocytosis or an abnormal differential white blood cell count should alert the physician to further investigate and/or refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count;
- The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent;
- A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to about 2.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

**Additional tests**1. Peripheral blood smears:

- Collecting the sample: As with reticulocyte count, the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin).
- Prepping the smear: When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to twelve hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.
- Minimum mandatory observations:
  - The differential white blood cell count;
  - Description of abnormalities in the appearance of red cells;
  - Description of any abnormalities in the platelets;

- A careful search must be made throughout of every blood smear for immature white cells such as band forms (in more than normal proportion, i.e., over 10 percent of the total differential count), any number of metamyelocytes, myelocytes, or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized;

- An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention, for it may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity;
- An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if it rises above 6.0 percent of the total white count;
- The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm<sup>3</sup> should be regarded as a possible sign of benzene-induced toxicity;
- A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segments - less often one or three round segments - rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop

acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below; however, such procedures should be undertaken by the hematologist.

## 2. Sucrose water test and Ham test:

- An uncommon sign, which cannot be detected from the smear, but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia, and may be followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the "sucrose water test" is positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

## **Important clinical findings**

1. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years.
  - Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias, or pancytopenia in a benzene-exposed individual, must be regarded as highly suspicious of more advanced although still reversible, toxicity.
  - "Pancytopenia" coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure unless proved otherwise.
  - Many severely aplastic patients manifested the ominous findings of:
    - 5 to 10 % myeloblasts in the marrow;
    - Occasional myeloblasts and myelocytes in the blood;
    - 20 to 30 monocytes.
  - It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, since any of these abnormalities is serious, the employee

must immediately be removed from any possible exposure to benzene vapor.

- Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy is made by the hematologist.

2. The findings of basophilic stippling in circulating red blood cells (usually found in one to five percent of red cells following marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

3. Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes, and this has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia.

- Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspicion for leukemia is high.

4. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.

5. Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-849-190 Definitions.

#### NEW SECTION

**WAC 296-855-099 Definitions. Action level.** An airborne concentration of ethylene oxide (EtO) of 0.5 parts per million, calculated as an eight-hour time-weighted average.

**Authorized personnel.** Individuals specifically permitted by the employer to enter the exposure control area to perform necessary duties, or to observe employee exposure evaluations.

**Breathing zone.** The space around and in front of an employee's nose and mouth, forming a hemisphere with a six-to nine-inch radius.

**CAS (Chemical Abstract Service) number.** CAS numbers are internationally recognized and used on safety data sheets (SDSs) and other documents to identify substances. For more information see <http://www.cas.org/about>.

**Container.** Any container, except for pipes or piping systems that contains ethylene oxide. It can be any of the following:

- (a) Barrel.
- (b) Bottle.
- (c) Can.
- (d) Cylinder.
- (e) Drum.
- (f) Reaction vessel.
- (g) Storage tank.

**Day.** Any part of a calendar day.

**Director.** The director means the director of the department of labor and industries or their designee.

**Emergency.** Any event that could or does result in the unexpected significant release of ethylene oxide. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

**Ethylene oxide (EtO).** Is an organic chemical represented by the CAS registry number 75-21-8. EtO is a flammable colorless gas and is commonly used to sterilize medical equipment and as a fumigant for certain agricultural products. It is also used as an intermediary in the production of various chemicals such as ethylene glycol, automotive antifreeze, and polyurethane.

**Exposure.** The contact an employee has with ethylene oxide, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Licensed health care professional (LHCP).** An individual whose legally permitted scope of practice allows him or her to provide some or all of the health care services required for medical evaluations.

**Permissible exposure limits (PELs).** PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable WISHA rules. The PELs for ethylene oxide (EtO) are:

- (a) Eight-hour time-weighted average (TWA<sub>8</sub>) of one part per million (ppm); and
- (b) Fifteen-minute short-term exposure limit (STEL) of five ppm.

**Short-term exposure limit (STEL).** An exposure limit averaged over a short time period (usually fifteen minutes) that must not be exceeded during any part of an employee's workday.

**Time-weighted average (TWA<sub>8</sub>).** An exposure limit averaged over an eight-hour period that must not be exceeded during an employee's workday.

AMENDATORY SECTION (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-100 Scope.** This chapter applies to all occupational exposure to ethylene oxide.

**Definition:**

**(\*) Ethylene oxide (EtO) (is).** An organic chemical represented by the Chemical Abstract Service (CAS) registry number 75-21-8. It is a flammable colorless gas that is commonly used to sterilize medical equipment and as a fumigant for certain agricultural products. It is also used as an intermediary in the production of various chemicals such as ethylene glycol, automotive antifreeze, and polyethylene.

**(\*) Exposure (is).** The contact an employee has with EtO, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, or skin and eye contact.

Some of the requirements in this chapter may not apply to every workplace with an occupational exposure to EtO. The following steps will show which requirements apply to your workplace based on employee exposure monitoring results.

**Step one:** Follow requirements in the basic rules section, WAC 296-855-20010 through 296-855-20090.

**Step two:** Use employee exposure monitoring results from the exposure evaluations required by, Exposure evaluations, WAC 296-855-20050, and follow Table 1 to find out which additional sections of this chapter apply to your workplace.

**Step three:** You need only follow Exposure records, WAC 296-855-20070 and Medical records, WAC 296-855-30080 if you have documentation conclusively demonstrating that employee exposure for ethylene oxide and the operation where it's used, cannot exceed the AL or STEL during any conditions reasonably anticipated.

- Such documentation can be based on observations, data, calculations, and previous air monitoring results.

**Table 1**  
**Sections That Apply to Your Workplace**

| <b>If:</b>   | <b>Then continue to follow the basic rules, and the additional requirements in:</b> |
|--|---|
| Employee exposure monitoring results are below the AL and STEL | No additional requirements if exposures remain stable                               |

| <b>If:</b>   | <b>Then continue to follow the basic rules, and the additional requirements in:</b>  |
|--|--|
| Employee exposure monitoring results are above the PELs<br><br>Note: PEL refers to both the STEL and TWA | <ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-855-30010 through 296-855-30080;</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• Exposure control, WAC <del>((296-855-40005 through 296-855-40045))</del> 296-855-40010 through 296-855-40040</li> </ul> |
| Employee exposure monitoring results are above the AL;<br><b>AND</b><br>Below the STEL                   | Exposure and medical monitoring, WAC 296-855-30010 through 296-855-30080   |
| When there is a possibility of an emergency release of EtO   | Establish a written emergency response plan and a means of alerting potentially exposed employees as found in Exposure control plan, WAC <del>((296-855-40005))</del> 296-855-40010  |

AMENDATORY SECTION (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-200 Basic rules.**

**Summary:**

**Your responsibility:**

To evaluate employee exposure and protect employee from ethylene oxide.

**IMPORTANT:**

• The requirements in basic rules apply to all employers covered by the scope of this chapter, WAC 296-855-100. Additional sections may apply to you, based on employee exposure monitoring results. Turn to the Scope, WAC 296-855-100, and follow Table 1.

| <b><u>You must meet the requirements...</u></b> | <b><u>in this section:</u></b> |
|---|--------------------------------|
| <u>Preventive practices</u>                     | <u>WAC 296-855-20010</u>       |
| <u>Exposure control areas</u>                   | <u>WAC 296-855-20020</u>       |
| <u>Personal protective equipment (PPE)</u>      | <u>WAC 296-855-20040</u>       |
| <u>Exposure evaluations</u>                     | <u>WAC 296-855-20050</u>       |
| <u>Notification</u>                             | <u>WAC 296-855-20060</u>       |
| <u>Exposure records</u>                         | <u>WAC 296-855-20070</u>       |
| <u>Documentation records</u>                    | <u>WAC 296-855-20080</u>       |

|   |                                |
|---|--------------------------------|
| <b><u>You must meet the requirements...</u></b> | <b><u>in this section:</u></b> |
| Training  | WAC 296-855-20090              |

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-855-20010 Preventive practices.** ~~((You must:~~

•) (1) You must make sure that all containers of EtO whose contents are capable of causing employee exposure above the action level or above the STEL are labeled, tagged, or marked with this warning(~~(-~~

~~AND~~

~~Prior to June 1, 2015, employers may include the following information on containers of EtO in lieu of the labeling requirements in WAC 296-855-420:~~

|  |
|--|
| <p><b>Danger</b><br/> <b>Contains Ethylene Oxide</b><br/> <b>Cancer Hazard and Reproductive Hazard</b></p> |
|--|

~~AND~~

~~A warning),~~ stating that breathing airborne concentrations of EtO is hazardous.

~~((•) (2) You must~~ keep container labels free of statements that contradict or detract from the labels' hazard warning.

**Note:** • EtO is highly flammable and should be kept in a tightly covered container, and in a cool, well-ventilated area away from any type of ignition source.

~~((You must:~~

•) (3) You must make sure warning labels remain on containers of EtO when these containers are transported.

**Exemption:** ((•) 1. Reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers and do not require labeling.

((•) 2. Labeling requirements do not apply when EtO:

((-) a. Is used as a pesticide as defined by the Federal Insecticide, Fungicide, and Rodenticides Act (7 U.S.C. 136 et seq.); and

~~((AND~~

-) b. Meets the Environmental Protection Agency labeling requirements for pesticides.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-855-20020 Exposure control areas.** ~~((You must:~~

•) (1) You must establish temporary or permanent exposure control areas where airborne concentrations of ethylene oxide (EtO) exceed or could exceed the permissible exposure limits (PELs) by doing all the following:

((-) (a) Clearly identify the boundaries of exposure control areas in any way that minimizes employee access.

((-) (b) Post signs at access points to exposure control areas that:

((•) (i) Are easy to read (for example, they are kept clean and well lit)((-)); and

~~((AND~~

•) (ii) Include this warning:

|   |
|---|
| <p><b>DANGER</b><br/> <b>ETHYLENE OXIDE</b><br/> <b>MAY CAUSE CANCER</b><br/> <b>MAY DAMAGE FERTILITY OR THE UNBORN CHILD</b><br/> <b>RESPIRATORY PROTECTION AND PROTECTIVE CLOTHING</b><br/> <b>MAY BE REQUIRED IN THIS AREA</b><br/> <b>AUTHORIZED PERSONNEL ONLY</b></p> |
|---|

~~((• Prior to June 1, 2016, employers may use the following legend in lieu of that specified in this section:~~

|   |
|---|
| <p><b>DANGER</b><br/> <b>ETHYLENE OXIDE</b><br/> <b>CANCER HAZARD AND REPRODUCTIVE HAZARD</b><br/> <b>AUTHORIZED PERSONNEL ONLY</b><br/> <b>RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED TO BE WORN IN THIS AREA</b></p> |
|---|

•) (2) You must keep signs and areas near them free of statements that contradict or detract from their message.

**Note:** • This requirement does not prevent you from posting other signs.

~~((You must:~~

•) (3) You must allow only authorized personnel to enter exposure control areas.

**Note:** ((•) 1. When identifying the boundaries of exposure control areas you should consider factors such as:

((-) a. The level and duration of airborne exposure.

((-) b. Whether the area is permanent or temporary.

((-) c. The number of employees in adjacent areas.

((•) 2. You may use permanent or temporary enclosures, caution tape, ropes, painted lines on surfaces, or other materials to visibly distinguish exposure control areas or separate them from the rest of the workplace.

~~((You must:~~

•) (4) You must make sure employees entering exposure control areas have appropriate respirators available for use.

((•) (5) You must prevent all of the following activities from occurring in exposure control areas:

((-) (a) Eating food.

((-) (b) Drinking beverages.

((-) (c) Smoking.

((-) (d) Chewing tobacco or gum.

((-) (e) Applying cosmetics.

((-) (f) Storing food, beverages, or cosmetics.

AMENDATORY SECTION (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-20040 Personal protective equipment (PPE).** ~~((You must:~~

•) (1) You must make sure employees wear appropriate PPE as protection from skin or eye contact with ethylene oxide (EtO), liquid EtO, or EtO solutions.

((•) (2) You must provide appropriate PPE at no cost to employees.

AMENDATORY SECTION (Amending WSR 07-06-005, filed 2/22/07, effective 4/1/07)

**WAC 296-855-20050 Exposure evaluations.**

**IMPORTANT:**

This section applies when there is a potential for airborne exposure to ethylene oxide (EtO) in your workplace.

When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

Following this section will also meet the requirements to identify and evaluate respiratory hazards found in chapter 296-841 WAC, Airborne contaminants.

~~((You must~~

•)) (1) You must conduct an employee exposure evaluation to accurately determine airborne concentrations of EtO by completing Steps one through seven of the exposure evaluation process, each time any of the following apply:

((-) (a) No evaluation has been conducted.

((-) (b) Changes have occurred in any of the following areas that may result in new or increased employee exposures:

((■) (i) Production.

((■) (ii) Processes.

((■) (iii) Personnel.

((■) (iv) Exposure controls such as ventilation systems or work practices.

((-) (c) You have any reason to suspect new or increased employee exposure may occur.

((\*) (2) You must provide affected employees and their designated representatives an opportunity to observe any exposure monitoring during Step six of the exposure evaluation process.

((\*) (3) You must make sure observers entering areas with EtO exposure:

((-) (a) Are provided with and use the same protective clothing, respirators, and other personal protective equipment (PPE) that employees working in the area are required to use; and

~~((AND~~

-)) (b) Follow all safety and health requirements that apply.

**Exposure evaluation process**

**Step one:** Identify all employees who have potential exposure to airborne ethylene oxide (EtO) in your workplace.

**Step two:** Identify operations where employee exposures could exceed EtO's fifteen-minute short-term exposure limit (STEL) of five parts per million (ppm).

**Step three:** Select employees from those working in the operations you identified in Step two who will have their STEL exposures measured.

**Step four:**

Select employees from those identified in Step one who will have their eight-hour exposures monitored.

- Make sure the exposures of the employees selected represent eight-hour exposures for all employees identified in Step one including each job classification, work area, and shift.

- If you expect all employee exposures to be below the action level (AL), you can choose to limit your selection to those employees reasonably believed to have the highest exposures. If you find these employees' exposure to be above the AL, then you'll need to repeat Step four to represent all employees identified in Step one.

**Note:**

You can use Steps three through six of this process to create a written description of the procedure used for obtaining representative employee exposure monitoring results, which is a requirement in Exposure records, WAC 296-855-20070.

**Exemption:**

((\*) 1. You can skip Steps four through seven if you have documentation conclusively demonstrating that employee exposure for a particular material and the operation where it's used, cannot exceed the AL or STEL during any conditions reasonably anticipated.

((\*) 2. Such documentation can be based on observations, data, calculations, and previous air monitoring results. Previous air monitoring results:

((-) a. Must meet the accuracy required by Step five.

((-) b. May be from outside sources, such as industry or labor studies.

((-) c. Must be based on data that represents conditions being evaluated in your workplace.

**Step five:**

Determine how you will obtain accurate employee exposure monitoring results. Select and use an air monitoring method with a confidence level of ninety-five percent, that's accurate to:

- ±twenty-five percent when concentrations are potentially above the AL or eight-hour time-weighted average of one part per million (ppm).
- ±thirty-five percent when concentrations are potentially above the AL of 0.5 ppm or the STEL of five ppm.

**Note:**

Here are examples of air monitoring methods that meet this accuracy requirement:

((\*) 1. OSHA Method thirty found by going to: <http://www.osha.gov/dts/sltc/methods/toc.html>.

((\*) 2. NIOSH Method thirty eight hundred found by going to: <http://www.cdc.gov/niosh/homepage.html> and linking to the NIOSH Manual of analytical methods.

**Step six:** Obtain employee monitoring results by collecting air samples representing employees identified in Steps three and four.

- Collect STEL samples for employees and operations selected in Step three.
- Collect samples representing the eight-hour exposure, for at least one shift, for each employee selected in Step four.
- Make sure samples are collected from each selected employee's breathing zone.

**Note:**

- ((\*) 1. You may use any sampling method that meets the accuracy specified in Step five. Examples of these methods include:
  - ((-) a. Real-time monitors that provide immediate exposure monitoring results.
  - ((-) b. Equipment that collects samples that are sent to a laboratory for analysis.
- ((\*) 2. The following are examples of methods for collecting samples representative of eight-hour exposures.
  - ((-) a. Collect one or more continuous samples, such as a single eight-hour sample or four two-hour samples.
  - ((-) b. Take a minimum of five brief samples, such as five fifteen-minute samples, during a work shift at randomly selected times.
- ((\*) 3. For work shifts longer than eight hours, monitor the continuous eight-hour portion of the shift expected to have the highest average exposure concentration.

**Step seven:** Have the samples you collected analyzed to obtain monitoring results for eight-hour and STEL exposures.

- Determine if employee exposure monitoring results are above or below the following values:
  - Eight-hour time-weighted average (TWA<sub>8</sub>) of one ppm.
  - Fifteen-minute short-term exposure limit (STEL) of five ppm.
  - Eight-hour action level (AL) of 0.5 ppm.

**Note:**

- ((\*) You may contact your local WISHA consultant for help:
  - ((-) 1. Interpreting data or other information.
  - ((-) 2. Determining eight-hour or fifteen-minute employee exposure monitoring results.

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-20060 Notification.** (~~You must:~~

**\*) (1) You must** provide written notification of exposure monitoring results to employees represented by your exposure evaluation, within five business days after monitoring results become known to you.

((\*) (2) In addition, when employee exposure monitoring results are above either the TWA<sub>8</sub> or STEL permissible exposure limit (PEL), you must provide written notification of all the following within fifteen business days after the results become known to you:

((-) (a) Corrective actions being taken and a schedule for completion; and

~~((AND~~

~~-)) (b)~~ Any reason why exposures can not be lowered to below the PELs.

**Note:**

- ((\*) 1. You can either notify employees individually or post the notifications in areas readily accessible to affected employees.
- ((\*) 2. Posted notification may need specific information that allows affected employees to determine which monitoring results apply to them.
- ((\*) 3. Notification may be:
  - ((-) a. In any written form, such as hand-written or email.
  - ((-) b. Limited to the required information, such as exposure monitoring results.
- ((\*) 4. When notifying employees about corrective actions, your notification may refer them to a separate document that is available and provides the required information.

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-20070 Exposure records.** (~~You must:~~

**\*) (1) You must** establish and keep complete and accurate records for all exposure monitoring evaluations conducted under this chapter. Make sure the record includes, at least:

((-) (a) The name, unique identifier, and job classification of:

~~((\*) (i)~~ The employee sampled; and

~~((AND~~

~~\*) (ii)~~ All other employees represented by the sampled employee.

((-) (b) A description of the methods used to obtain exposure monitoring results and evidence of the methods' accuracy.

((-) (c) The operation being monitored for employee exposure to EtO.

((-) (d) A description of the procedure used to obtain representative employee exposure monitoring results.

((-) (e) The date, number, duration, location, and the result of each sample taken.

((-) (f) Any environmental conditions that could affect exposure concentration measurements.

((-) (g) Any personal protective equipment (PPE) worn by the employee including the type of respirator.

**Note:**

- You can use Steps three through six of the exposure evaluation process in Exposure evaluations, WAC 296-855-20050, to create a description of the procedure you used for obtaining representative employee exposure monitoring results.

~~((You must:~~

**\*) (2) You must** keep exposure monitoring records for at least thirty years.

**Reference:** ((\*) 1. To see additional requirements for employee exposure records including access, and transfer requirements, go to another chapter, Employee medical and exposure records, chapter 296-802 WAC.  
 ((\*) 2. Exposure monitoring records need to be kept longer than thirty years for employees participating in medical monitoring, go to Medical records, WAC 296-849-12080.

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-20080 Documentation records. (~~You must:~~**

\*) (1) You must keep documentation you develop, of the processing, use, or handling of products made from or containing EtO, that conclusively demonstrates that the action level or STEL for EtO cannot be exceeded under any foreseeable conditions of use.

((\*) (2) You must include the following in the documentation record:

((-) (a) The product that is the subject of the documentation;

((-) (b) The source of the data;

((-) (c) Any testing protocol, results of testing, and/or analysis of the product for the release of EtO;

((-) (d) A description of the operation where the product is used and how the data support your conclusion; and

((-) (e) Other data relevant to the operations, materials, processing, or employee exposures covered by your conclusion.

((\*) (3) You must maintain the documentation record for as long as you rely on your conclusion that the action level and STEL cannot be exceeded.

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-855-20090 Training. (~~You must:~~**

\*) (1) You must train employees who are potentially exposed above the:

((-) (a) Action level (AL) 0.5 parts per million (ppm); ~~or~~

~~or~~ (b) Fifteen-minute short-term exposure limit (STEL) of five ppm.

((\*) (2) You must provide training:

((-) (a) At the time of initial assignment; and

~~and~~

(b) Then at least every twelve months.

((\*) (3) You must make sure training and information includes all of the following:

((-) (a) The requirements of this chapter.

((-) (b) The location and availability of this chapter.

((-) (c) The purpose of medical evaluations and a description of your medical evaluation program required in Medical evaluations, WAC 296-855-30030 in this chapter.

((-) (d) Monitoring procedures and observations to detect the presence or release of EtO.

((-) (e) The physical and health hazards of EtO.

((-) (f) Actions employees can take to protect themselves from EtO exposure such as work practices, emergency procedures, and PPE.

((-) (g) The details of your hazard communication program required by another chapter, Hazard communication, (~~WAC 296-901-140~~) chapter 296-901 WAC.

((-) (h) Operations in employee work areas where EtO is present.

((-) (i) The following information found in the General occupational health standards, chapter 296-62 WAC:

((\*) (i) The Substance safety data sheet, WAC 296-62-07383 Appendix A.

((\*) (ii) The Substance technical guidelines, WAC 296-62-07385 Appendix B.

((\*) (iii) Medical surveillance guidelines, WAC 296-62-07387 Appendix C.

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-300 Exposure and medical monitoring.**

**Summary:**

**Your responsibility:**

To monitor employee health and workplace exposures to ethylene oxide (EtO).

**IMPORTANT:**

((\*) These sections apply when employee exposure monitoring results are either above the:

((-) 1. Action level (AL) of 0.5 parts per million (ppm);

or

~~or~~

2. Short-term exposure limit (STEL) of five ppm.

| <u>You must meet the requirements...</u> | <u>in this section:</u>  |
|--|--------------------------|
| <u>Periodic exposure monitoring</u>      | <u>WAC 296-855-30010</u> |
| <u>Medical evaluations</u>               | <u>WAC 296-855-30030</u> |
| <u>Medical records</u>                   | <u>WAC 296-855-30080</u> |

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-30010 Periodic exposure monitoring.**

**Exemption:** Periodic employee exposure monitoring is not required if exposure monitoring results conducted to fulfill requirements in Exposure evaluation, WAC 296-855-20050, are below the action level (AL).

**(~~You must:~~**

\*) You must obtain employee exposure monitoring results according to the frequency specified in Table 2, Periodic Exposure Evaluation Frequencies.

**Note:** • If you documented that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you may limit sample collection to the work shift with higher exposures and use those results to represent all employees performing the operation on other shifts.

**Table 2**  
**Periodic Exposure Evaluation Frequencies**

| <b>If employee exposure monitoring results:</b>   | <b>Then:</b>  |
|---|---|
| Are between the:<br>• Action level (AL) of 0.5 parts per million (ppm);<br><b>AND</b><br>•TWA <sub>8</sub> of 1 ppm   | Conduct additional exposure monitoring at least every 6 months.                               |
| Are above the TWA <sub>8</sub> ;<br><b>OR</b><br>Above the STEL   | Conduct additional exposure monitoring at least every 3 months.                               |
| Have been obtained at least every 3 months;<br><b>AND</b><br>Have 2 consecutive monitoring results, taken at least 7 days apart, showing 8-hour employee exposure monitoring results that have dropped below the TWA <sub>8</sub> , but remain at or above the AL | You may <b>decrease</b> your evaluation frequency for the TWA <sub>8</sub> to every 6 months. |
| Have 2 consecutive evaluations, taken at least 7 days apart, showing 8-hour employee exposure monitoring results that have dropped below the AL and STEL  | You may <b>stop</b> periodic exposure evaluations.  |

AMENDATORY SECTION (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-30030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations meeting all requirements of this section will fulfill the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators.

~~((You must:~~

•) (1) You must make medical evaluations available to current employees:

((-) (a) Who have been, are, or may be exposed above the action level (AL) for at least thirty days in any twelve-month period.

((-) (b) Exposed to EtO during an emergency situation.

((-) (c) Wanting medical advice on EtO exposure and reproductive health.

((-) (d) Whenever the employee develops signs and symptoms commonly associated with ethylene oxide.

((-) (e) At no cost including travel costs and wages associated with any time spent obtaining the medical evaluation.

((-) (f) At reasonable times and places.

((\*) (2) You must complete Steps one through four of the medical evaluation process at the following times:

((-) (a) Initially, when employees are assigned to work in an area where exposure monitoring results are, or will likely be, above the action level (AL) for at least thirty days in a twelve-month period.

((-) (b) Every twelve months for employees exposed above the AL for at least thirty days in the preceding year unless the examining physician determines that they should be provided more frequently.

((-) (c) When employment with exposure ends, if the employee has not had an evaluation within the six-month period before exposure ends.

**Note:** ((\*) 1. Employees who decline to receive medical examination and testing to monitor for health effects caused by EtO are not excluded from receiving a separate medical evaluation for respirator use.

((\*) 2. If employers discourage participation in medical monitoring for health effects caused by EtO, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy.

~~((Helpful tool: **Declination form for nonemergency related medical evaluations**~~

~~You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to ethylene oxide (EtO). To see this form, go to the resources section within this chapter.))~~

**Medical evaluation process**

**Step one:** Select an appropriate licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

- If the LHCP is not a licensed physician, make sure individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution.

**Step two:** Make sure the LHCP receives all of the following information before the medical evaluation is performed:

- A copy of:
  - This chapter.
  - The following information found in the General occupational health standards, chapter 296-62 WAC:
    - The Substance safety data sheet, WAC 296-62-07383(1) Appendix A.

- The Substance technical guidelines, WAC 296-62-07385(2) Appendix B.
- Medical surveillance guidelines, WAC 296-62-07387(3) Appendix C.
- A description of the duties of the employee being evaluated and how these duties relate to EtO exposure.
- The anticipated or representative exposure monitoring results for the employee being evaluated.
- A description of the personal protective equipment (PPE) and respirators each employee being evaluated uses or will use.
- Information from previous employment-related examinations when this information is not available to the examining LHCP.
- Instructions that the written opinions the LHCP provides you be limited to the following information:
  - Whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to EtO.
  - Any recommended limitations for EtO exposure and use of respirators or other PPE.
  - A statement that the employee has been informed of medical results and medical conditions caused by EtO exposure requiring further examination or treatment.

**Step three:** Make medical evaluations available to the employee. Make sure they include the content listed in Table 3, Content of Medical Evaluations.

**Step four:** Obtain the LHCP's written opinion for the employee's medical evaluation and make sure the employee receives a copy within five business days after you receive the written opinion.

- Make sure the written opinion is limited to the information specified for written opinions in Step two.

**Note:** • If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 3**  
**Content of Medical Evaluations**

| <b>When conducting:</b>   | <b>Include:</b>   |
|---|---|
| An initial and annual evaluation  | <ul style="list-style-type: none"> <li>• A work history and medical history that includes emphasis on:                             <ul style="list-style-type: none"> <li>- Pulmonary, hematological, neurological, reproductive systems;</li> </ul> </li> <li>AND</li> <li>- The eyes and skin.</li> <li>• A physical examination that includes emphasis on:                             <ul style="list-style-type: none"> <li>- Pulmonary, hematological, neurological, and reproductive systems;</li> </ul> </li> <li>AND</li> <li>- The skin and eyes.</li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>- White cell count with differential</li> <li>- Red cell count</li> <li>- Hematocrit</li> <li>- Hemoglobin.</li> </ul> </li> <li>• Additional examinations the licensed health care professional (LHCP) believes appropriate based on the employee's exposure to ethylene oxide (EtO) or respirator use.</li> <li>• Additional testing:                             <ul style="list-style-type: none"> <li>- Pregnancy test, and laboratory evaluation for fertility if requested by employee and approved by evaluating LHCP.</li> </ul> </li> </ul> |
| Evaluations due to termination of employment                                  | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> </ul>   |
| Evaluations due to reassignment to an area where EtO exposure is below the AL | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> <li>• As determined by the LHCP.</li> </ul>   |
| Evaluations due to exposure during an emergency                               | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> </ul>   |

| When conducting:   | Include:   |
|--|--|
| Evaluations triggered by employee signs and symptoms commonly associated with overexposure to EtO or a request for reproductive advice | <ul style="list-style-type: none"> <li>• The content of medical examinations and consultations will be determined by the examining LHCP.</li> <li>- Pregnancy test, and laboratory evaluation for fertility if requested by employee and approved by evaluating LHCP.</li> </ul> |
| Evaluations determined necessary by LHCP for exposed employees   | <ul style="list-style-type: none"> <li>• The content of medical examinations and consultations will be determined by the examining LHCP.</li> </ul>  |

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-30080 Medical records.**

**IMPORTANT:**

This section applies when a medical evaluation is performed, or any time a medical record is created for an employee exposed to ethylene oxide (EtO).

**((You must:**

•) (1) You must establish and maintain complete and accurate medical records for each employee receiving a medical evaluation for EtO and make sure the records include all the following:

- ((-) (a) The employee's name and unique identifier.
- ((-) (b) Any employee medical complaints related to EtO.
- ((-) (c) A description of the employee's duties.
- ((-) (d) A copy of the licensed health care professional's (LHCP's) written opinions.
- ((-) (e) The anticipated or representative employee exposure monitoring results provided to the LHCP for the employee.

((-) (f) A copy of the information required in Step two of the medical evaluation process, found in WAC 296-855-30030, except the copy of this chapter and the appendices.

((•) (2) You must maintain medical records for the duration of employment plus thirty years.

**Note:** • Your medical provider may keep these records for you. Other medical records, such as the employee's medical history or X rays, need to be kept as confidential records by the medical provider.

**Reference:** For additional requirements that apply to employee exposure records including access and transfer requirements, go to, Employee medical and exposure records, chapter 296-802 WAC.

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-400 Exposure control.**

**Summary:**

**Your responsibility:**

To protect employees from exposure to ethylene oxide (EtO) by using feasible exposure controls and appropriate respirators.

**IMPORTANT:**

((•) These sections apply when employee exposure monitoring results are above either of the following permissible exposure limits (PELs):

((-) 1. The eight-hour time-weighted average (TWA<sub>8</sub>) of one part per million (ppm); or

~~((OR~~

-) 2. The fifteen-minute short-term exposure limit (STEL) of five ppm.

| <u>You must meet the requirements...</u> | <u>in this section:</u>  |
|--|--------------------------|
| <u>Exposure control plan</u>             | <u>WAC 296-855-40010</u> |
| <u>Exposure controls</u>                 | <u>WAC 296-855-40030</u> |
| <u>Respirators</u>                       | <u>WAC 296-855-40040</u> |

**AMENDATORY SECTION** (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

**WAC 296-855-40010 Exposure control plan. ((You must:**

•) (1) You must establish and implement a written exposure control plan to reduce employee exposure to EtO below both TWA<sub>8</sub> and the STEL by the use of feasible exposure controls. Include at least the following in your plan:

- ((-) (a) A schedule for periodic leak detection surveys.
- ((-) (b) Make sure employee rotation is not included as a method to control employee exposure.

((•) (2) You must establish a written plan for emergency situations for each work area where there is a possibility of an emergency from a release of EtO. The plan must include, at a minimum:

- ((-) (a) Emergency escape:
  - ((■) (i) Procedures.
  - ((■) (ii) Route assignments.
- ((-) (b) Emergency evacuation plans and procedures to account for all employees after emergency evacuation has been completed.

((-) (c) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate.

((-) (d) Requirements for the use of respiratory protection as required in WAC ~~((296-855-40045))~~ 296-855-40040.

((-) (e) Rescue and medical duties for those employees who will perform them.

((-) (f) The preferred means of reporting fires and other emergencies.

((-) (g) Names or regular job titles of persons or departments who can be contacted for further information or explanation of duties under the plan.

((•) (3) You must establish an employee alarm system that meets the requirements of Employee alarm systems, WAC 296-800-31070 in the safety and health core rules.

((-) The employee alarm system must be distinctive and recognizable as a signal to perform actions designated under the emergency response plan.

((\*) (4) You must review your exposure control plan at least every twelve months and update as needed to reflect your current workplace conditions.

((\*) (5) You must provide a copy of your exposure control plan to affected employees and their designated representatives, when they ask to review or copy it.

AMENDATORY SECTION (Amending WSR 07-06-005, filed 2/22/07, effective 4/1/07)

**WAC 296-855-40030 Exposure controls.**

**IMPORTANT:**

The use of an employee rotation schedule to control employee exposure to ethylene oxide (EtO) is prohibited.

Respirators and other personal protective equipment (PPE) are not exposure controls.

~~((You must~~

\*) (1) You must use feasible exposure controls to (± -) reduce exposure to, or below, the permissible exposure limit (PELs); or

~~((or~~

-to) (2) You must reduce exposure to the lowest achievable level above the PELs.

AMENDATORY SECTION (Amending WSR 09-15-145, filed 7/21/09, effective 9/1/09)

**WAC 296-855-40040 Respirators.**

**IMPORTANT:**

The requirements in this section are in addition to the requirements found in another chapter, Respirators, chapter 296-842 WAC.

Medical evaluations meeting all requirements of WAC 296-855-30030, will fulfill the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

~~((You must~~

\*) (1) You must provide each employee with an appropriate respirator that complies with the requirements of this section, and require that employees use them in circumstances where exposure is above either PEL, such as when:

((\*) (a) Feasible exposure controls are being put in place.

((\*) (b) Employees conduct work operations such as maintenance and repair activities or vessel cleaning for which exposure controls are not feasible.

((\*) (c) Feasible exposure controls do not reduce exposures to or below the PELs.

((\*) (d) Employees are responding to emergencies.

((\*) (2) You must ensure all respirator use is accompanied by eye protection either through the use of full-facepiece respirators, hoods, or chemical goggles.

((\*) (3) You must develop, implement, and maintain a respirator program that meets the requirements of another chapter, Respirators, chapter 296-842 WAC, which covers each employee required by this chapter to use a respirator.

((-) (a) You must select and provide to employees appropriate respirators according to this section and WAC 296-842-13005 in the respirator rule.

((-) (b) You must limit selection and use of respirators, including escape respirators, to those with a full-facepiece or

another type of respirator providing eye protection. This is necessary to prevent eye irritation or injury from EtO exposure.

((-) (c) You must equip full-facepiece air-purifying respirators, including escape respirators, with a front- or back-mounted canister certified for protection against ethylene oxide.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-855-420 Communication of hazards.** Hazard communication—General.

((\*) (1) Chemical manufacturers, importers, distributors and employers (~~shall~~) must comply with all requirements of the Hazard Communication Standard (HCS), (~~WAC 296-901-140~~) chapter 296-901 WAC for EtO.

((\*) (2) In classifying the hazards of EtO at least the following hazards are to be addressed: Cancer; reproductive effects; mutagenicity; central nervous system; skin sensitization; skin, eye and respiratory tract irritation; acute toxicity effects; and flammability.

~~((Employers shall~~) (3) You must include EtO in the hazard communication program established to comply with the HCS, (~~WAC 296-901-140~~) chapter 296-901 WAC. Employers (~~shall~~) must ensure that each employee has access to labels on containers of EtO and to safety data sheets, and is trained in accordance with the requirements of HCS and WAC 296-855-20090.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-855-500 Definitions.

NEW SECTION

**WAC 296-856-099 Definitions. Action level.** An airborne concentration of formaldehyde of 0.5 parts per million of air calculated as an 8-hour time-weighted average.

**Authorized personnel.** Individuals specifically permitted by the employer to enter the exposure control area to perform duties, or to observe employee exposure evaluations as a designated representative.

**Breathing zone.** The space around and in front of an employee's nose and mouth, forming a hemisphere with a six-to nine-inch radius.

**Canister or cartridge (air-purifying).** Part of an air-purifying respirator that consists of a container holding materials such as fiber, treated charcoal, or a combination of the two, that removes contaminants from the air passing through the cartridge or canister.

**CAS (chemical abstract service) number.** CAS numbers are internationally recognized and used on safety data sheets (SDSs) and other documents to identify substances. For more information, see <http://www.cas.org>.

**Container.** Any container, except for pipes or piping systems that contains formaldehyde. It can be any of the following:

- Barrel.
- Bottle.
- Can.
- Cylinder.
- Drum.
- Reaction vessel.
- Shipping containers.
- Storage tank.

**Designated representative.** Any one of the following:

- Any individual or organization to which an employee gives written authorization.
  - A recognized or certified collective bargaining agent without regard to written employee authorization.
  - The legal representative of a deceased or legally incapacitated employee.

**Emergency.** Any event that could or does result in the unexpected significant release of formaldehyde. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

**Exposure.** The contact an employee has with formaldehyde, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Formaldehyde.** An organic chemical with the formula of HCHO, represented by the chemical abstract service (CAS) registry number 50-00-0. Examples of primary uses of formaldehyde and its solutions are as follows:

- An intermediate in the production of:
  - Resins.
  - Industrial chemicals.
- A bactericide or fungicide.
- A preservative.

• A component in the manufacture of end-use consumer items such as cosmetics, shampoos, and glues.

**Licensed health care professional (LHCP).** An individual whose legally permitted scope of practice allows him or her to provide some or all of the health care services required for medical evaluations.

**Permissible exposure limits (PELs).** PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are also specified in WISHA rules found in other chapters. The PEL for formaldehyde is an 8-hour time-weighted average (TWA<sub>8</sub>) of 0.75 parts per million (ppm) and a 15-minute short-term exposure limit of 2 ppm.

**Short-term exposure limit (STEL).** An exposure limit averaged over a 15-minute period that must not be exceeded during an employee's workday.

**Time-weighted average (TWA<sub>8</sub>).** An exposure limit averaged over an 8-hour period that must not be exceeded during an employee's workday.

**Uncontrolled release.** A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk are:

- Large-quantity releases.

- Small releases that could be highly toxic.
- Potentially contaminated individuals arriving at hospitals.
  - Airborne exposures that could exceed a WISHA permissible exposure limit or a published exposure limit and employees are not adequately trained or equipped to control the release.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-100 Scope.** This chapter applies to all occupational exposure to formaldehyde. Formaldehyde includes formaldehyde gas, its solutions, and materials that release formaldehyde.

**Definitions:**

**Formaldehyde ((is)).** An organic chemical with the formula of HCHO, represented by the chemical abstract service (CAS) registry number 50-00-0. Examples of primary uses of formaldehyde and its solutions are as follows:

- An intermediate in the production of:
  - Resins.
  - Industrial chemicals.
- A bactericide or fungicide.
- A preservative.
- A component in the production of end-use consumer items such as cosmetics, shampoos, and glues.

**Exposure ((is)).** The contact an employee has with formaldehyde, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

Some of the requirements in this chapter may not apply to every workplace with an occupational exposure to formaldehyde. At a minimum, you (~~need to~~) must:

- Follow requirements in the basic rules sections, WAC 296-856-20010 through 296-856-20070.
- Use employee exposure monitoring results required by Exposure evaluation, WAC 296-856-20060.
- Follow Table 1 to find out which additional sections of this chapter apply to your workplace.

**Table 1**  
**Sections That Apply To Your Workplace**

| <b>If</b>  | <b>Then continue to follow the basic rules, and the additional requirements in</b>  |
|--|---|
| <ul style="list-style-type: none"> <li>• Employee exposure monitoring results are above the 8-hour time-weighted average (TWA<sub>8</sub>) or short-term exposure limit (STEL)</li> </ul>  | <ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-856-30010 through 296-856-30050; (<del>AND</del>) <u>and</u></li> <li>• Exposure control areas, WAC 296-856-40010 through 296-856-40030.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Employee exposure monitoring results are:                             <ul style="list-style-type: none"> <li>- Below the TWA<sub>8</sub> and STEL; (<del>AND</del>) <u>and</u></li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-856-30010 through 296-856-30050</li> </ul>  |

|  |  |
|--|--|
| <b>If</b>  | <b>Then continue to follow the basic rules, and the additional requirements in</b> |
| - Above the action level (AL)                                    |  |
| • Employee exposure monitoring results are below the AL and STEL | • Exposure and medical monitoring, WAC 296-856-30020 through 296-856-30050         |

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-200 Basic rules.**

**Your responsibility:**

To measure and minimize employee exposure to formaldehyde.

**IMPORTANT:**

• The requirements in basic rules apply to all employers covered by the scope of this chapter. Additional sections may apply to you. Turn to the scope and follow Table 1 in that section to determine the additional sections of this chapter that apply to you.

~~((Section contents:~~

~~Preventive practices~~

~~WAC 296-856-20010.~~

~~Training~~

~~WAC 296-856-20020.~~

~~Personal protective equipment (PPE)~~

~~WAC 296-856-20030.~~

~~Employee protective measures~~

~~WAC 296-856-20040.~~

~~Exposure evaluations~~

~~WAC 296-856-20050.~~

~~Notification~~

~~WAC 296-856-20060.~~

~~Exposure records~~

~~WAC 296-856-20070.))~~

| <u><b>You must meet the requirements...</b></u> | <u><b>in this section:</b></u> |
|---|--------------------------------|
| <u>Preventive practices</u>                     | <u>WAC 296-856-20010</u>       |
| <u>Training</u>                                 | <u>WAC 296-856-20020</u>       |
| <u>Personal protective equipment (PPE)</u>      | <u>WAC 296-856-20030</u>       |
| <u>Employee protective measures</u>             | <u>WAC 296-856-20040</u>       |
| <u>Exposure evaluations</u>                     | <u>WAC 296-856-20050</u>       |
| <u>Notification</u>                             | <u>WAC 296-856-20060</u>       |
| <u>Exposure records</u>                         | <u>WAC 296-856-20070</u>       |

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-20010 Preventive practices. ((You must:**

•) (1) You must make sure containers of gasses, solutions, or materials composed of greater than 0.1 percent formaldehyde, **and** capable of releasing formaldehyde at concentrations greater than 0.1 ppm to 0.5 ppm, are properly labeled, tagged, or marked with all of the following:

((-) (a) That the product contains formaldehyde.

((-) (b) The name and address of the responsible party (for example manufacturer, importer, or employer).

((-) (c) A statement that the physical and health hazard information can be obtained from you, and from the safety data sheet (SDS).

((\*) (2) You must label, tag, or mark containers and materials capable of releasing formaldehyde at levels above 0.5 ppm as follows:

((-) (a) Include the requirements in WAC 296-856-42010.

((-) (b) Appropriately address all hazards as defined in WAC 296-901-14008, 296-901-14022, and 296-901-14024, including cancer and respiratory sensitization.

~~((Prior to June 1, 2015, employers may include the phrase "Potential Cancer Hazard" in lieu of "May Cause Cancer."~~

-) (c) Follow the requirements for labels found in:

■ WAC 296-901-140, 296-901-14022, and 296-901-14024.

~~((You must:~~

•) (3) You must make sure you have a housekeeping and maintenance program to detect leaks and spills by doing at least the following:

((-) (a) Regular visual inspections.

((-) (b) Preventive maintenance of equipment, that includes surveys for leaks, at regular intervals.

((-) (c) In areas where spills could occur, make resources available to contain the spills, decontaminate the area affected, and dispose of waste.

((-) (d) Promptly repair leaks and clean up spills.

((-) (e) Train employees who will clean spills and repair leaks, about the methods for cleanup and decontamination.

((-) (f) Make sure employees who will clean up spills and repair leaks, have the appropriate personal protective equipment and respirators.

((-) (g) Dispose of waste from spills or leaks in sealed containers marked with information that states the contents contain formaldehyde and the hazards associated with formaldehyde exposure. The employer ~~((shall))~~ must ensure that the labels are in accordance with WAC 296-856-420.

((-) (h) Develop and implement appropriate procedures to minimize injury and loss of life if there is a possibility of an emergency, such as an uncontrolled release of formaldehyde.

**Note:** Following the requirements of a separate chapter, Emergency response, chapter 296-824 WAC, will meet the requirements for emergency procedures.

((\*) (4) You must provide emergency washing facilities, for formaldehyde exposures, as required by a separate chapter, the safety and health core rules, First aid, WAC 296-800-150, as follows:

((-) (a) Emergency showers in the immediate work areas where skin contact to solutions of 1 percent or greater of formaldehyde could occur.

((-)) (b) Emergency eye wash in the immediate work area where an eye contact to solutions of 0.1 percent or greater of formaldehyde could occur.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-20020 Training.**

**Exemption:** Training is not required for employees when you have conclusive documentation that they cannot be exposed to formaldehyde at airborne concentrations above 0.1 parts per million (ppm).

~~((You must~~

~~•)) (1) You must provide training and information to employees exposed to formaldehyde at all of the following times:~~

~~((-)) (a) At the time of initial assignment to a work area where there is formaldehyde exposure.~~

~~((-)) (b) Whenever there is a new exposure to formaldehyde in their work area.~~

~~((-)) (c) At least every twelve months after initial training.~~

~~((•)) (2) You must make sure training includes at least the following:~~

~~((-)) (a) The contents of this chapter and SDS for formaldehyde.~~

~~((-)) (b) The purpose of medical evaluations and a description of how you are fulfilling the medical evaluation requirements of this chapter.~~

~~((-)) (c) The health hazards and signs and symptoms associated with formaldehyde exposure, including:~~

~~((■)) (i) Cancer hazard.~~

~~((■)) (ii) Skin and respiratory system irritant and sensitizer.~~

~~((■)) (iii) Eye and throat irritation.~~

~~((■)) (iv) Acute toxicity.~~

~~((-)) (d) How employees will immediately report any signs or symptoms suspected to be from formaldehyde exposure.~~

~~((-)) (e) Descriptions of operations where formaldehyde is present.~~

~~((-)) (f) Explanations of safe work practices to limit employee exposure to formaldehyde for each job.~~

~~((-)) (g) The purpose, proper use, and limitations of personal protective clothing.~~

~~((-)) (h) Instructions for the handling of spills, emergencies, and clean-up procedures.~~

~~((-)) (i) An explanation of the importance of exposure controls, and instructions in the use of them.~~

~~((-)) (j) A review of emergency procedures, including the specific duties or assignments of each employee in the event of an emergency.~~

~~((-)) (k) The purpose, proper use, limitations, and other training requirements for respiratory protection, as required by a separate chapter, Respirators, chapter 296-842 WAC.~~

~~((•)) (3) You must make sure any written training materials are readily available to your employees at no cost.~~

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-20030 Personal protective equipment (PPE).** ~~((You must~~

~~•)) (1) You must provide PPE at no cost to employees and make sure employees wear the equipment.~~

~~((•)) (2) You must make sure that employees do not take contaminated clothing or other PPE from the workplace.~~

Select PPE that is appropriate for your workplace based on at least the following:

~~((-)) (a) The form of formaldehyde, such as gas, solution, or material.~~

~~((-)) (b) The conditions of use.~~

~~((-)) (c) The hazard to be prevented.~~

~~((•)) (3) You must provide full body protection for entry into areas where formaldehyde exposure could exceed 100 parts per million (ppm) or when airborne concentrations are unknown.~~

~~((•)) (4) You must protect employees from all contact with liquids containing one percent or more of formaldehyde by providing chemical protective clothing that is impervious to formaldehyde and other personal protective equipment, such as goggles and face shields, as appropriate for the operation.~~

~~((•)) (5) You must make sure when face shields are worn, employees also wear chemical safety goggles if there could be eye contact with formaldehyde.~~

~~((•)) (6) You must make sure contaminated clothing and other PPE is cleaned or laundered before it is used again.~~

~~((•)) (7) You must repair or replace clothing and other PPE as needed to maintain effectiveness.~~

~~((•)) (8) You must make sure storage areas for ventilating contaminated clothing and PPE are established to minimize employee exposure to formaldehyde.~~

~~((-)) (a) Make sure storage areas and containers for contaminated clothing and PPE have labels or signs with the following warning:~~

|   |
|---|
| <p><b>DANGER</b><br/> <b>FORMALDEHYDE-CONTAMINATED (CLOTHING) EQUIPMENT</b><br/> <b>MAY CAUSE CANCER</b><br/> <b>CAUSES SKIN, EYE, AND RESPIRATORY IRRITATION</b><br/> <b>DO NOT BREATHE VAPOR</b><br/> <b>DO NOT GET ON SKIN</b></p> |
|---|

~~((Labels)) (b) The employer ~~((shall))~~ must ensure containers for contaminated clothing and equipment are labeled consistent with the Hazard Communication Standard, WAC 296-901-140, and ~~((shall))~~ must, as a minimum, include the following:~~

|  |
|--|
| <p><b>DANGER</b><br/> <b>FORMALDEHYDE-CONTAMINATED (CLOTHING) EQUIPMENT</b><br/> <b>MAY CAUSE CANCER</b><br/> <b>CAUSES SKIN, EYE AND RESPIRATORY IRRITATION</b><br/> <b>DO NOT BREATHE VAPOR</b><br/> <b>DO NOT GET ON SKIN</b></p> |
|--|

~~((Prior to June 1, 2016, employers may use the following legend in lieu of that specified above in this section:~~

**DANGER**  
 FORMALDEHYDE-CONTAMINATED (CLOTHING) OR EQUIPMENT  
**AVOID INHALATION AND SKIN CONTACT**

~~-Prior to June 1, 2015, employers may use the following information on containers of protective clothing and equipment in lieu of the labeling requirements specified above in this section:~~

**DANGER**  
 FORMALDEHYDE-CONTAMINATED (CLOTHING) OR EQUIPMENT  
**AVOID INHALATION AND SKIN CONTACT**

~~**You must:**~~

~~•) (9) You must make sure that only employees trained to recognize the hazards of formaldehyde remove personal protective equipment (PPE) and clothing from storage areas for the purposes of disposal, cleaning, or laundering.~~

~~((\*) (10) You must inform any person who launders, cleans, or repairs contaminated clothing or other PPE, of the hazards of formaldehyde and procedures to safely handle the clothing and equipment.~~

~~((\*) (11) You must provide change rooms for employees who are required to change from work clothes into protective clothing to protect them from skin contact with formaldehyde.~~

~~((-) Make sure change rooms have separate storage facilities for street clothes and protective clothing.~~

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-20040 Employee protective measures.**

~~((You must:~~

~~•) You must implement appropriate protective measures while you conduct your exposure evaluation.~~

~~((-) Employees performing activities with exposure to airborne formaldehyde that could exceed the 0.75 ppm, 8-hour time-weighted average (TWA<sub>8</sub>), or the 2 ppm 15-minute short-term exposure limit (STEL), need to follow the requirements in WAC 296-856-30010 through 296-856-40030 of this chapter.~~

**Reference:** For respirator requirements, turn to Respirators, WAC 296-856-40060.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-20050 Exposure evaluations.**

**IMPORTANT:**

• This section applies when there is a potential for an employee to be exposed to airborne formaldehyde in your workplace.

• When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

• Following this section will fulfill the requirements to identify and evaluate respiratory hazards found in a separate chapter, Respiratory hazards, chapter 296-841 WAC.

~~((You must:~~

~~•) (1) You must conduct an employee exposure evaluation to accurately determine airborne concentrations of formaldehyde by completing Steps 1 through 7 of the exposure evaluation process, each time any of the following apply:~~

~~((-) (a) No evaluation has been conducted.~~

~~((-) (b) Changes have occurred in any of the following areas that may result in new or increased employee exposures:~~

~~((■) (i) Production.~~

~~((■) (ii) Processes.~~

~~((■) (iii) Exposure controls, such as ventilation systems or work practices.~~

~~((■) (iv) Personnel.~~

~~((■) (v) Equipment.~~

~~((-) (c) You have any reason to suspect new or increased employee exposure may occur.~~

~~((-) (d) You receive a report of employee developing signs and symptoms associated with formaldehyde exposure.~~

~~((You must:~~

~~•) (2) You must provide affected employees or their designated representatives an opportunity to observe exposure monitoring required by this chapter.~~

~~((\*) (3) You must make sure observers entering areas with formaldehyde exposure:~~

~~((-) (a) Are provided with and use the same protective clothing, respirators, and other personal protective equipment (PPE) that employees working in the area are required to use;~~

~~AND~~

~~((-) (b) Follow any safety and health requirements that apply.~~

**Exposure evaluation process:**

**Exemption:**

• Exposure monitoring is not necessary if you have documentation conclusively demonstrating that employee exposure for a particular material and the operation where it is used, cannot exceed the action level (AL) or short-term exposure limit (STEL) during any conditions reasonably anticipated.

• Such documentation can be based on observations, data, calculations, and previous air monitoring results. Previous air monitoring results:

- Must meet the accuracy required by Step 5.

- Must be based on data that represents conditions being evaluated in your workplace.

- May be from outside sources, such as industry or labor studies.

**Step 1:**

Identify all employees who have potential exposure to airborne formaldehyde in your workplace.

**Step 2:**

Identify operations where employee exposures could exceed the 15-minute short-term exposure limit (STEL) for formaldehyde of 2 parts per million (ppm).

- Note:** You may use monitoring devices such as colorimetric indicator tubes or real-time monitors to screen for activities where employee exposures could exceed the STEL.
- Step 3:** Select employees from those working in the operations you identified in Step 2 who will have their 15-minute exposures monitored.
- Step 4:** Select employees from those identified in Step 1 who will have their 8-hour exposures monitored.
- Make sure the exposures of the employees selected represent 8-hour exposures for all employees identified in Step 1, including each job activity, work area, and shift.
  - If you expect exposures to be **below** the action level (AL), you may limit your selection to those employees reasonably believed to have the highest exposures.
  - If you find any of those employees' exposure to be **above** the AL, then you need to repeat monitoring to include each job activity, work area, and shift.
- Reference:** A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records, as required by Exposure records, WAC 296-856-20070.
- This description can be created while completing Steps 3 through 6 of this exposure evaluation process.
- Step 5:** Determine how you will obtain accurate employee exposure monitoring results. Select and use an air monitoring method with a confidence level of 95 percent, that is accurate to:
- ±25 percent when concentrations are potentially above the TWA of 0.75 parts per million (ppm).
  - ±25 percent when concentrations are potentially above the STEL of 2 ppm.
  - ±35 percent when concentrations are potentially above the AL.
- Note:**
- Here are examples of air monitoring methods that meet this accuracy requirement:
    - OSHA Method 52 found at <http://www.osha.gov/dts/sltc/methods/toc.html>.
    - NIOSH methods: 2016, 2514, 3500, 2539, and 5700, found at <http://www.cdc.gov/niosh/homepage.html> and linking to the NIOSH Manual of Analytical Methods.
    - Direct reading methods found at <http://www.osha.gov/SLTC/formaldehyde/index.html>
- Step 6:** Obtain employee exposure monitoring results by collecting air samples to accurately determine the formaldehyde exposure of employees identified in Steps 3 and 4.
- Make sure samples are collected from each selected employee's breathing zone.
- Note:**
- You may use any sampling method that meets the accuracy specified in Step 5. Examples of these methods include:
    - Real-time monitors that provide immediate exposure monitoring results.
    - Equipment that collects samples that are sent to a laboratory for analysis.
  - The following are examples of methods for collecting samples representative of 8-hour exposures.
    - Collect one or more continuous samples, such as a single 8-hour sample or four 2-hour samples.
    - Take a minimum of 5 brief samples, such as five 15-minute samples, during the work shift at randomly selected times.
  - For work shifts longer than 8 hours, monitor the continuous 8-hour portion of the shift expected to have the highest average exposure concentration.
- Step 7:** Have the samples you collected analyzed to obtain employee exposure monitoring results for 8-hour and short-term exposure limits (STEL) exposures.
- Determine if employee exposure monitoring results are above or below the following values:
    - 8-hour action level (AL) of 0.5 ppm.
    - 8-hour time-weighted average (TWA<sub>8</sub>) of 0.75 ppm.
    - 15-minute short-term exposure limit (STEL) of 2 ppm.
- Reference:** To use the monitoring results to determine which additional chapter sections apply to employee exposure in your workplace, turn to the Scope, WAC 296-856-100, and follow Table 1 in that section.
- Note:**
- You may contact your local WISHA consultant for help with:
    - Interpreting data or other information.
    - Determining 8-hour employee exposure monitoring results.
  - To contact a WISHA consultant:
    - Go to the safety and health core rules, chapter 296-800 WAC; (~~AND~~) and
    - Find the resources section, and under "other resources," find service locations for labor and industries.

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-20060 Notification.** (~~You must~~ →) You must provide written notification of exposure monitoring results to employees represented by your expo-

sure evaluation, within five business days after the results become known to you.

((-)) In addition, when employee exposure monitoring results are above the permissible exposure limits (PEL), of either the 8-hour time-weighted average (TWA<sub>8</sub>) or the 15-minute short-term exposure limit (STEL), provide written notification of both of the following within fifteen business days after the results become known to you:

((■)) (1) Corrective actions being taken and a schedule for completion.

((■)) (2) Any reason why exposures cannot be lowered to below the PEL.

- Note:**
- You can notify employees either individually or post the notifications in areas readily accessible to affected employees.
  - Posted notification may need specific information that allows affected employees to determine which monitoring results apply to them.
  - Notification may be:
    - In any written form, such as handwritten or email.
    - Limited to the required information, such as exposure monitoring results.
  - When notifying employees about corrective actions, your notification may refer them to a separate document that is available and provides the required information.

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-20070 Exposure records.** ((~~You must~~ •)) (1) You must establish and keep complete and accurate records for all exposure monitoring conducted under this chapter. Make sure the record includes at least the following:

((-)) (a) The name, unique identifier, and job classification of both:

((■)) (i) The employee sampled;

AND

((■)) (ii) All other employees represented by the sampled employee.

((-)) (b) An estimate of the exposure for each employee "represented" by this monitoring.

((-)) (c) A description of the methods used to obtain exposure monitoring results and evidence of the method's accuracy.

((-)) (d) Any environmental conditions that could affect exposure concentration measurements.

((-)) (e) A description of the procedure used to obtain representative employee exposure monitoring results.

((-)) (f) The operation being monitored.

((-)) (g) The date, number, duration, location, and the result of each sample taken.

((-)) (h) The type of protective devices worn.

((•)) (2) You must maintain documentation that conclusively demonstrates that employee exposure for formaldehyde and the operation where it is used cannot exceed the action level or the 15-minute short-term exposure limit, during any reasonable anticipated conditions.

((-)) Such documentation can be based on observations, data, calculation, and previous air monitoring results.

((•)) (3) You must keep exposure monitoring records for at least thirty years.

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-300 Exposure and medical monitoring.**

**Your responsibility:**

To monitor employee health and workplace exposures to formaldehyde.

~~((Section contents:~~

~~Periodic exposure evaluations~~

~~WAC 296-856-30010.~~

~~Medical and emergency evaluations~~

~~WAC 296-856-30020.~~

~~Medical removal~~

~~WAC 296-856-30030.~~

~~Multiple LHCP review~~

~~WAC 296-856-30040.~~

~~Medical records~~

~~WAC 296-856-30050.))~~

| <u>You must meet the requirements...</u> | <u>in the section:</u>   |
|--|--------------------------|
| <u>Periodic exposure evaluations</u>     | <u>WAC 296-856-30010</u> |
| <u>Medical and emergency evaluations</u> | <u>WAC 296-856-30020</u> |
| <u>Medical removal</u>                   | <u>WAC 296-856-30030</u> |
| <u>Multiple LHCP review</u>              | <u>WAC 296-856-30040</u> |
| <u>Medical records</u>                   | <u>WAC 296-856-30050</u> |

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-30010 Periodic exposure evaluations.**

**Exemption:** Periodic employee exposure monitoring is not required if exposure monitoring results conducted to fulfill requirements in this chapter, Exposure evaluations, WAC 296-856-20050, are below both the action level (AL) and 15-minute short-term exposure limit (STEL).

~~((You must~~

~~•)) You must obtain employee exposure monitoring results as specified in Table 2 by repeating Steps 1 and 7 of the exposure evaluation process found within this chapter, in Exposure evaluations, WAC 296-856-20050.~~

**Note:** If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you may limit sample collection to the work shift with higher exposures and use those results to represent all employees performing the operation on other shifts.

**Table 2**  
**Periodic Exposure Evaluation Frequencies**

| <b>If employee exposure monitoring results</b> | <b>Then</b>  |
|--|--|
| Are above the action level (AL) of 0.5 ppm     | Conduct additional exposure monitoring at least every six months for the employees |

| If employee exposure monitoring results  | Then  |
|--|---|
|  | represented by the monitoring results   |
| Are above the short-term exposure limit (STEL) of 2 ppm  | Repeat exposure monitoring at least once a year, or more often as necessary to evaluate employee exposure   |
| <p>Have decreased to below the AL <b>and</b> the STEL</p> <p style="text-align: center;"><b>AND</b></p> <p>The decrease is demonstrated by two consecutive exposure evaluations made at least seven days apart</p> | <p>You may <b>stop</b> periodic employee exposure monitoring for employees represented by the monitoring results.</p> <p>Note: You need to monitor again if there is a change in any of the following that may result in new or increased employee exposures:</p> <ul style="list-style-type: none"> <li>• Production</li> <li>• Processes</li> <li>• Exposure controls, such as ventilation systems or work practices</li> <li>• Personnel</li> <li>• Equipment</li> </ul> |

**AMENDATORY SECTION** (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-30020 Medical and emergency evaluations.**

**IMPORTANT:**

• Medical evaluations completed to meet the respirator use requirements of this section also need to meet the requirements found in a separate chapter, Respirators, medical evaluations, WAC 296-842-140.

~~((You must~~

•) (1) You must make medical evaluations available to current employees who:

((-) (a) Are exposed to formaldehyde concentrations above the action level (AL) or short-term exposure limit (STEL).

((-) (b) Are exposed to formaldehyde during an emergency situation.

((-) (c) Develops signs and symptoms commonly associated with formaldehyde exposure.

((\*) (2) You must make medical examinations available to current employees as deemed necessary by the LHCP after reviewing the medical disease questionnaire for employees that are presently not required to wear a respirator.

((\*) (3) You must complete Steps 1 through 4 of the medical evaluation process at the following times:

((-) (a) Initially, when employees are assigned to work in an area where exposure monitoring results are above the action level (AL) or above the STEL.

((-) (b) At least every twelve months from the initial medical evaluation for employees exposed to formaldehyde above the action level (AL) or the STEL.

((-) (c) Whenever the employee develops signs and symptoms commonly associated with formaldehyde.

**Note:** Signs and symptoms are rarely associated with formaldehyde concentrations in air less than 0.1 parts per million (ppm), and in materials at concentration levels less than 0.1 percent.

~~((You must~~

•) (4) You must make medical evaluations available:

((-) (a) At no cost to employees, including travel costs and wages associated with any time spent obtaining the medical evaluation.

((-) (b) At reasonable times and places.

**Note:**

- Employees who decline to receive a medical evaluation to monitor for health effects caused by formaldehyde are not excluded from receiving a separate medical evaluation for respirator use.
- If employers discourage participation in medical monitoring for health effects caused by formaldehyde, or in any way interferes with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy.

**Medical evaluation process:**

**Step 1:** Select a licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

- If the LHCP is not a licensed physician, make sure individuals who conduct pulmonary function tests, have completed a training course in spirometry, sponsored by an appropriate governmental, academic, or professional institution.

**Note:** The LHCP must be a licensed physician or supervised by a physician.

**Step 2:** Make sure the LHCP receives all of the following information before the medical evaluation is performed:

- A copy of this chapter.
- The helpful tools: *Substance Technical Guideline for Formalin, Medical Surveillance, and Medical Disease Questionnaire*.
- A description of the duties of the employee being evaluated and how these duties relate to formaldehyde exposure.
- The anticipated or representative exposure monitoring results for the employee being evaluated.
- A description of the personal protective equipment (PPE) and respiratory protection each employee being evaluated uses or will use.
- Information in your possession from previous employment-related examinations when this information is not available to the examining LHCP.
- A description of the emergency and the exposure, when an examination is provided due to an exposure received during an emergency.
- Instructions that the written opinions the LHCP provides to you, does **not** include any diagnosis or other personal

medical information, **and** is limited to the following information:

- The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to formaldehyde.

- Any recommended limitations for formaldehyde exposure and use of respirators or other PPE.

- A statement that the employee has been informed of medical results and medical conditions caused by formaldehyde exposure requiring further examination or treatment.

**Step 3:** Make a medical evaluation available to the employee. Make sure it includes the content listed in Table 3, Content of Medical Evaluations.

**Step 4:** Obtain the LHCP's written opinion for the employee's medical evaluation and make sure the employee receives a copy within five business days after you receive the written opinion.

- Make sure the written opinion is limited to the information specified for written opinions in Step 2.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 3**  
**Content of Medical Evaluations**

| When conducting an                         | Include   |
|--|---|
| Initial<br><br>OR<br><br>Annual evaluation | <ul style="list-style-type: none"> <li>• A medical disease questionnaire that provides a work and medical history with emphasis on:                             <ul style="list-style-type: none"> <li>- Upper or lower respiratory problems</li> </ul> </li> <li>- Allergic skin conditions or dermatitis</li> <li>- Hyper reactive airway diseases</li> <li>- Eyes, nose, and throat irritation</li> <li>• Physical examinations deemed necessary by the LHCP, that include at a minimum:                             <ul style="list-style-type: none"> <li>- Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, and respiratory systems, and shortness of breath</li> <li>- Counseling, provided by the LHCP to the employee as part of the medical examination if the LHCP determines that the employee has a medical condition that may be aggravated by formaldehyde exposure</li> </ul> </li> <li>• Pulmonary function tests for respirator users, that include at a minimum:                             <ul style="list-style-type: none"> <li>- Forced vital capacity (FVC)</li> </ul> </li> </ul> |

| When conducting an                        | Include  |
|---|--|
|   | <ul style="list-style-type: none"> <li>- Forced expiratory volume in one second (FEV1)</li> <li>- Forced expiratory flow (FEF)</li> </ul>  |
| Emergency exposure evaluation             | <ul style="list-style-type: none"> <li>• A medical examination that includes a work history with emphasis on evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation</li> <li>• Additional examinations the licensed health care professional (LHCP) believes appropriate, based on the employee's exposure to formaldehyde</li> </ul>  |
| Evaluation of reported signs and symptoms | <ul style="list-style-type: none"> <li>• A medical disease questionnaire that provides a work and medical history with emphasis on:                             <ul style="list-style-type: none"> <li>- Upper or lower respiratory problems</li> <li>- Allergic skin conditions or dermatitis</li> <li>- Hyper reactive airway diseases</li> <li>- Eyes, nose, and throat irritation</li> </ul> </li> <li>• A physical examination if considered necessary by the LHCP that includes at a minimum:                             <ul style="list-style-type: none"> <li>- Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, respiratory systems, and shortness of breath</li> <li>- Counseling if the LHCP determines that the employee has a medical condition that may be aggravated or caused by formaldehyde exposure</li> </ul> </li> </ul> |

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-30030 Medical removal.**

**Exemption:** Medical removal or restrictions do not apply when skin irritation or skin sensitization occurs from products that contain less than 0.05 percent of formaldehyde.

**IMPORTANT:**

- This section applies when an employee reports irritation of the mucosa of the eye or the upper airways, respiratory sensitization, dermal irritation, or skin sensitization from formaldehyde exposure.

- When determining the content of formaldehyde in materials that employees have exposure to, you may use doc-

umentation, such as manufacturer's data, or independent laboratory analyses.

~~((You must:~~

•)) You must complete Steps 1 through 4 of the medical evaluation process for removal of employees, in this section, for employees that report signs and symptoms of formaldehyde exposure.

**Note:** When the employee is exposed to products containing less than 0.1 percent formaldehyde, the LHCP can assume, absent of contrary evidence, that employee signs and symptoms are not due to formaldehyde exposure.

#### Medical evaluation process for removal of employees:

**Step 1:** Provide the employee with a medical evaluation by an LHCP selected by the employer.

**Step 2:** Based on information in the medical questionnaire the LHCP will determine if the employee will receive an examination as described in Table 3, Content of Medical Evaluations, in Medical and emergency evaluations, WAC 296-856-30020.

- If the LHCP determines that a medical examination is not necessary, there will be a two-week evaluation and correction period to determine whether the employee's signs and symptoms resolve without treatment, from the use of creams, gloves, first-aid treatment, personal protective equipment, or industrial hygiene measures that reduce exposure.

■ If before the end of the two-week period the employee's signs or symptoms worsen, immediately refer them back to the LHCP.

■ If signs and symptoms persist after the two-week period, the LHCP will administer a physical examination as outlined in Table 3, Content of Medical Evaluations, in Medical and emergency evaluations, WAC 296-856-30020.

**Step 3:** Promptly follow the LHCP's restrictions or recommendations. If the LHCP recommends removal from exposure, do either of the following:

- Transfer the employee to a job currently available that:

■ The employee qualifies for, or could be trained for, in a short period of time (up to six months);

AND

■ Will keep the employee's exposure to as low as possible, and never above the AL of 0.5 parts per million.

- Remove the employee from the workplace until either:

■ A job becomes available that the employee qualifies for, or could be trained for in a short period of time **and** will keep the employee's exposure to as low as possible and never above the AL;

OR

■ The employee is returned to work or permanently removed from formaldehyde exposure, as determined by completing Steps 1 through 3 of the medical evaluation process for removal of employees, in this section.

**Step 4:** Make sure the employee receives a follow-up examination within six months from being removed from the formaldehyde exposure by the LHCP. At this time, the LHCP will determine if the employee can return to their original job status, or if the removal is permanent.

~~((You must:~~

•)) (1) You must maintain the employee's current pay rate, seniority, and other benefits if:

((-) (a) You move them to a job that they qualify for, or could be trained in a short period of time, and will keep the employee's exposure to as low as possible and never above the AL;

OR

((-) (b) In the case there is no such job available, then until they are able to return to their original job status or after six months, (~~which ever~~) whichever comes first.

**Note:**

- If you must provide medical removal benefits and the employee will receive compensation for lost pay from other sources, you may reduce your medical removal benefit obligation to offset the amount provided by these sources.
- Examples of other sources are:
  - Public or employer-funded compensation programs.
  - Employment by another employer, made possible by the employee's removal.

((\*) (2) You must make medical evaluations available:

((-) (a) At no cost to employees, including travel costs and wages associated with any time spent obtaining the medical examinations and evaluations((-); and

(b) At reasonable times and places.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

#### WAC 296-856-30040 Multiple LHCP review.

##### IMPORTANT:

• This section applies each time a medical examination or consultation is performed to determine whether medical removal or restriction is required.

~~((You must:~~

•)) (1) You must promptly notify employees that they may seek a second medical opinion from an LHCP of their choice, each time a medical examination or consultation is conducted by an LHCP selected by the employer to evaluate medical removal.

((-) At a minimum, this notification must include the details of your multiple physician review process.

**Note:** Notification may be provided in writing or by verbal communication.

~~((You must:~~

•)) (2) You must complete requirements in the multiple LHCP review process once you have been informed of an employee's decision to seek a second medical opinion.

((\*) (3) You must pay for and complete the multiple LHCP review process for employees who:

((-) (a) Inform you in writing or by verbal communication that they will seek a second medical opinion.

((-) (b) Initiate steps to make an appointment with the LHCP they select. This LHCP will be referred to as the second LHCP.

((-) (c) Fulfill the previous actions to inform you, and initiate steps for an appointment, within fifteen days from receiving either your notification or the initial LHCP's written opinion, whichever is received later.

**Note:** This process allows for selection of a second LHCP and, when disagreements between LHCPs persist, for selection of a third LHCP.

**Multiple LHCP review process:**

**Step 1:** Make sure the information required by Step 4 of the medical evaluation process is received by the second LHCP. This process is located in the section, Medical and emergency evaluations, WAC 296-856-30020.

- This requirement also applies when a third LHCP is selected.

**Step 2:** Allow the second LHCP to:

- Review findings, determinations, or recommendations from the original LHCP you selected;

**AND**

- Conduct medical examinations, consultations, and laboratory tests as necessary to complete their review.

**Step 3:** Obtain a written opinion from the second LHCP and make sure the employee receives a copy within five business days from the date you receive it. If findings, determinations, and recommendations in the written opinion are:

- Consistent with the written opinion from the initial LHCP, you can end the multiple physician review process. Make sure you follow the LHCP's recommendations.

- Inconsistent with the written opinion from the initial LHCP, then you and the employee must make sure efforts are made for the LHCPs to resolve any disagreements.

■ If the LHCPs quickly resolve disagreements, you can end the multiple physician review process. Make sure you follow the LHCP's recommendations.

■ If disagreements are not resolved within thirty business days, continue to Step 4.

**Step 4:** You and the employee must work through your respective LHCPs to agree on the selection of a third LHCP, or work together to designate a third LHCP to:

- Review findings, determinations, or recommendations from the initial and second LHCP;

**AND**

- Conduct medical examinations, consultations, and laboratory tests as necessary to resolve disagreements between the initial and second LHCP.

**Step 5:** Obtain a written opinion from the third LHCP and make sure the employee receives a copy within five business days from the day you receive it.

- Follow the third LHCP's recommendations, unless you and the employee agree to follow recommendations consistent with at least one of the three LHCPs.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-30050 Medical records.**

**IMPORTANT:**

• This section applies when a medical evaluation is performed or any time a medical record is created for an employee exposed to formaldehyde.

~~((You must:~~

•) (1) You must establish and maintain complete and accurate medical records for each employee receiving a medical evaluation for formaldehyde and make sure the records include all the following:

(-) (a) The employee's name and unique identifier.

(-) (b) A description of any health complaints that may be related to formaldehyde exposure.

(-) (c) A copy of the licensed health care professional's (LHCP's) written opinions.

(-) (d) Exam results.

(-) (e) Medical questionnaires.

(\*) (2) You must maintain medical records for the duration of employment plus thirty years.

**Note:**

• Employee medical records need to be maintained in a confidential manner. The medical provider may keep these records for you.

• Medical records may only be accessed with the employee's written consent.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-400 Exposure control areas.**

**Your responsibility:**

To control employee exposure to airborne formaldehyde and protect employees by using appropriate respirators.

**IMPORTANT:**

• These sections apply when employee exposure monitoring results are above the permissible exposure limit (PEL):

- The 8-hour time-weighted average (TWA<sub>8</sub>) of 0.75 parts per million (ppm);

**OR**

- The 15-minute short-term exposure limit (STEL) of two parts per million (ppm).

~~((Section contents:~~

~~Exposure controls~~

~~WAC 296-856-40010.~~

~~Establishing exposure control areas~~

~~WAC 296-856-40020.~~

~~Respirators~~

~~WAC 296-856-40030.))~~

| <u>You must meet the requirements...</u>   | <u>in this section:</u>  |
|--|--------------------------|
| <u>Exposure controls</u>                   | <u>WAC 296-856-40010</u> |
| <u>Establishing exposure control areas</u> | <u>WAC 296-856-40020</u> |
| <u>Respirators</u>                         | <u>WAC 296-856-40030</u> |

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

**WAC 296-856-40010 Exposure controls.**

**IMPORTANT:**

• Respirators and other personal protective equipment (PPE) are **not** exposure controls.

~~((You must:~~

•) You must use feasible exposure controls to reduce employee exposures to a level below the permissible exposure limit (PEL) or to as low a level as achievable.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-40020 Establishing exposure control areas. ((You must:**

•) (1) You must establish temporary or permanent exposure control areas where airborne concentrations of formaldehyde are above either the 8-hour time-weighted average (TWA<sub>8</sub>) or the 15-minute short-term exposure limit (STEL), by doing at least the following:

((-) (a) Clearly identify the boundaries of exposure control areas in any way that minimizes employee access.

((-) (b) Post signs at access points to exposure control areas that:

((■) (i) Are easy to read (for example, they are kept clean and well lit);

AND

((■) (ii) Include this warning:

**DANGER**  
**FORMALDEHYDE**  
**MAY CAUSE CANCER**  
**CAUSES SKIN, EYE, AND RESPIRATORY IRRITATION**  
**AUTHORIZED PERSONNEL ONLY**

((Prior to June 1, 2016, employers may use the following legend in lieu of the above one in this section:

**DANGER**  
**FORMALDEHYDE**  
**IRRITANT AND POTENTIAL CANCER HAZARD**  
**AUTHORIZED PERSONNEL ONLY**)

**Note:** This requirement does not prevent you from posting other signs.

~~((You must:~~

•) (2) You must allow only employees, who have been trained to recognize the hazards of formaldehyde exposure, to enter exposure control areas.

- Note:**
- When identifying the boundaries of exposure control areas you should consider factors such as:
    - The level and duration of airborne exposure.
    - Whether the area is permanent or temporary.
    - The number of employees in adjacent areas.
  - You may use permanent or temporary enclosures, caution tape, ropes, painted lines on surfaces, or other materials to visibly distinguish exposure control areas or separate them from the rest of the workplace.

~~((You must:~~

•) (3) You must inform other employers at multi-employer work sites of the exposure control areas, and the restrictions that apply to those areas.

**AMENDATORY SECTION** (Amending WSR 09-15-145, filed 7/21/09, effective 9/1/09)

**WAC 296-856-40030 Respirators.**

**IMPORTANT:**

- The requirements in this section are in addition to the requirements found in the following separate chapters:
  - Respiratory hazards, chapter 296-841 WAC.
  - Respirators, chapter 296-842 WAC.
- Medical evaluations meeting all requirements of Medical and emergency evaluations, WAC 296-856-30020, will

fulfill the medical evaluations requirements found in Respirators, chapter 296-842 WAC, a separate chapter.

~~((You must:~~

•) (1) You must develop, implement, and maintain a respirator program as required by chapter 296-842 WAC, Respirators, which covers each employee required by this chapter to use a respirator.

((-) Require that employees use respirators in any of the following circumstances:

((■) (a) Employees are in an exposure control area.

((■) (b) Feasible exposure controls are being put in place.

((■) (c) Where you determine that exposure controls are not feasible.

((■) (d) Feasible exposure controls do not reduce exposures to, or below, the PEL.

((■) (e) Employees are performing tasks presumed to have exposures above the PEL.

((■) (f) Emergencies.

(•) (2) You must select, and provide to each employee who uses a respirator required by this chapter, an appropriate respirator as specified in this section and in WAC 296-842-13005 in the respirator rule.

(•) (3) You must equip full-facepiece air-purifying respirators with cartridges or canisters approved for protection against formaldehyde.

(•) (4) You must provide to employees, for escape, one of the following respirator options:

((-) (a) A self-contained breathing apparatus operated in demand or pressure-demand mode;

OR

((-) (b) A full-facepiece air-purifying respirator equipped with a chin-style, or front- or back-mounted industrial size canister or cartridge.

(•) (5) You must make sure all air-purifying respirator use is accompanied by eye protection either through the use of full-facepiece models or effective, gas-proof chemical goggles.

(•) (6) You must provide employees with powered air-purifying respirators (PAPRs) when:

((-) (a) The employee has difficulty using a negative pressure respirator or a LHCP recommends this type of respirator;

AND

((-) (b) The employee chooses to use this type of respirator.

(•) (7) You must replace the chemical cartridges or canisters on air-purifying respirators;

((-) (a) When indicated by NIOSH-approved, end-of-service-life indicators if these are used;

OR

((-) (b) When NIOSH-approved ESLIs aren't used:

((■) (i) At times specified by your cartridge change schedule;

OR

((■) (ii) At the end of the work shift, when this occurs before the time indicated by your cartridge change schedule.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-420 Communication of hazards.**

~~((Section contents:~~

~~Hazard communication—General~~

~~WAC 296-856-42010))~~

|   |                                |
|---|--------------------------------|
| <u><b>You must meet the requirements...</b></u> | <u><b>in this section:</b></u> |
| <u>Hazard communication—General</u>             | <u>WAC 296-856-42010</u>       |

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-856-42010 Hazard communication—General.** ((\*) (1) Chemical manufacturers, importers, distributors and employers must comply with all requirements of Hazard communication, WAC 296-901-140.

((\*) (2) You must, in classifying the hazards of formaldehyde, at least address the following hazards (~~are to be addressed~~): Cancer; skin and respiratory sensitization; eye, skin and respiratory tract irritation; acute toxicity effects; and flammability.

((\*) (3) Employers (~~shall~~) must include formaldehyde in the hazard communication program established to comply with the HCS, WAC 296-901-140. Employers (~~shall~~) must ensure that each employee has access to labels on containers of formaldehyde and to safety data sheets, and is trained in accordance with the requirements of HCS and WAC 296-856-20020.

((\*) (4) The above information in this section applies to chemicals associated with formaldehyde gas, all mixtures or solutions composed of greater than 0.1% formaldehyde, and materials capable of releasing formaldehyde into the air at concentrations reaching or exceeding 0.1 ppm.

((\*) (5) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-856-500 Definitions.

**WSR 18-17-150**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed August 21, 2018, 10:23 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 18-11-114.

Title of Rule and Other Identifying Information: Chapter 296-840 WAC, Respirable crystalline silica, WAC 296-840-170 Appendix B—Medical surveillance guidelines—Non-mandatory and 296-840-175 Appendix C—Adult tuberculosis screening tool for workers exposed to respirable crystalline silica—Nonmandatory.

Hearing Location(s): On September 26, 2018, at 11:00 a.m., at the Department of Labor and Industries, Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: September 28, 2018.

Submit Written Comments to: Josefina Magana, P.O. Box 44620, Olympia, WA 98504-4620, email Josefina.Magana@lni.wa.gov, fax 360-902-5619, by September 26, 2018, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Josefina Magana, phone 360-902-4233, fax 360-902-5619, email Josefina.Magana@lni.wa.gov, by September 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department adopted rules for occupational exposure to respirable silica, chapter 296-840 WAC, on March 20, 2018. These rules, adopted in response to the Occupational Safety and Health Administration's (OSHA) 2016 final rules for respirable crystalline silica, include requirements for medical surveillance.

These proposed rules add two nonmandatory appendices to chapter 296-840 WAC. These appendices are medical resources to aid physicians and other licensed health care professionals (PLHCP) regarding compliance with the medical surveillance provisions of the rule. The first, a medical surveillance guideline, is included in Appendix B. The second, a tuberculosis screening tool designed as an adjunct to the clinical evaluation, is included in Appendix C. Under chapter 296-840 WAC final decisions about medical recommendations rest with PLHCP.

Reasons Supporting Proposal: Employers are required to provide PLHCPs with a copy of chapter 296-840 WAC and the inclusion of the nonmandatory guidance documents will assist PLHCPs in implementing the medical surveillance requirements. In addition, the department received comments during the adoption of the substantive requirements of chapter 296-840 WAC requesting the appendices be included in the rule. This proposal is also consistent with OSHA's rules which include Appendix B.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: 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 not required under RCW 34.05.328. This rule making proposes to adopt nonmandatory appendices, and as such does not impose any new costs and is not a significant legislative rule per RCW 34.05.328

(5)(c)(iii). The nonmandatory Appendix B is consistent with OSHA's rules for the respirable crystalline silica in 29 C.F.R. 1910.1053 Appendix B, and 29 C.F.R. 1926.1153 Appendix B (RCW 34.05.328 (5)(b)(iii)). Both mandatory appendices clarify existing requirements under chapter 296-840 WAC without changing the effect of the existing rules (RCW 34.05.328 (5)(b)(iv)).

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 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 statewide 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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The nonmandatory Appendix B is consistent with OSHA's rules for the respirable crystalline silica in 29 C.F.R. 1910.1053 Appendix B, and 29 C.F.R. 1926.1153 Appendix B. Both mandatory appendices clarify existing requirements under chapter 296-840 WAC without changing the effect of the existing rules.

August 21, 2018  
Joel Sacks  
Director

## NEW SECTION

### **WAC 296-840-170 Appendix B—Medical surveillance guidelines—Nonmandatory.**

#### **Introduction.**

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 respirable crystalline silica standard (chapter 296-840 WAC, Respirable crystalline silica). 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 standard.

Medical screening and surveillance allow for early identification of exposure-related health effects in individual employee and groups of employees, so that actions can be taken to both avoid further exposure and prevent or address adverse health outcomes. Silica-related diseases can be fatal, encompass a variety of target organs, and may have public health consequences when considering the increased risk of a latent tuberculosis (TB) infection becoming active. Thus, medical surveillance of silica-exposed employees requires

that PLHCPs have a thorough knowledge of silica-related health effects.

This Appendix is divided into eight sections. Section 1 reviews silica-related diseases, medical responses, and public health responses. Section 2 outlines the components of the medical surveillance program for employees exposed to silica. Section 3 describes the roles and responsibilities of the PLHCP implementing the program and of other medical specialists and public health professionals. Section 4 provides a discussion of considerations, including confidentiality. Section 5 provides a list of additional resources and Section 6 lists references.

Section 7 provides sample forms for the written medical report for the employee, the written medical opinion for the employer and the written authorization. Section 8 provides information regarding Washington state reporting requirements for tuberculosis.

### **1. Recognition of Silica-related Diseases.**

1.1. Overview. The term "silica" refers specifically to the compound silicon dioxide (SiO<sub>2</sub>). Silica is a major component of sand, rock, and mineral ores. Exposure to fine (respirable size) particles of crystalline forms of silica is associated with adverse health effects, such as silicosis, lung cancer, chronic obstructive pulmonary disease (COPD), and activation of latent TB infections. Exposure to respirable crystalline silica can occur in industry settings such as foundries, abrasive blasting operations, paint manufacturing, glass and concrete product manufacturing, brick making, china and pottery manufacturing, manufacturing of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuck-pointing. New uses of silica continue to emerge. These include countertop manufacturing, finishing, and installation (Kramer et al. 2012; OSHA 2015) and hydraulic fracturing in the oil and gas industry (OSHA 2012).

Silicosis is an irreversible, often disabling, and sometimes fatal fibrotic lung disease. Progression of silicosis can occur despite removal from further exposure. Diagnosis of silicosis requires a history of exposure to silica and radiologic findings characteristic of silica exposure. Three different presentations of silicosis (chronic, accelerated, and acute) have been defined. Accelerated and acute silicosis are much less common than chronic silicosis. However, it is critical to recognize all cases of accelerated and acute silicosis because these are life-threatening illnesses and because they are caused by substantial overexposures to respirable crystalline silica. Although any case of silicosis indicates a breakdown in prevention, a case of acute or accelerated silicosis implies current high exposure and a very marked breakdown in prevention.

In addition to silicosis, employees exposed to respirable crystalline silica, especially those with accelerated or acute silicosis, are at increased risks of contracting active TB and other infections (ATS 1997; Rees and Murray 2007). Exposure to respirable crystalline silica also increases an employee's risk of developing lung cancer, and the higher the cumulative exposure, the higher the risk (Steenland et al. 2001; Steenland and Ward 2014). Symptoms for these dis-

eases and other respirable crystalline silica-related diseases are discussed below.

1.2. Chronic Silicosis. Chronic silicosis is the most common presentation of silicosis and usually occurs after at least 10 years of exposure to respirable crystalline silica. The clinical presentation of chronic silicosis is:

1.2.1. Symptoms - shortness of breath and cough, although employees may not notice any symptoms early in the disease. Constitutional symptoms, such as fever, loss of appetite and fatigue, may indicate other diseases associated with silica exposure, such as TB infection or lung cancer. Employees with these symptoms should immediately receive further evaluation and treatment.

1.2.2. Physical Examination - may be normal or disclose dry rales or rhonchi on lung auscultation.

1.2.3. Spirometry - may be normal or may show only a mild restrictive or obstructive pattern.

1.2.4. Chest X-ray - classic findings are small, rounded opacities in the upper lung fields bilaterally. However, small irregular opacities and opacities in other lung areas can also occur. Rarely, "eggshell calcifications" in the hilar and mediastinal lymph nodes are seen.

1.2.5. Clinical Course - chronic silicosis in most cases is a slowly progressive disease. Under the respirable crystalline silica standard, the PLHCP is to recommend that employees with a 1/0 category X-ray be referred to an American Board Certified Specialist in Pulmonary Disease or Occupational Medicine. The PLHCP and/or Specialist should counsel employees regarding work practices and personal habits that could affect employees' respiratory health.

1.3. Accelerated Silicosis. Accelerated silicosis generally occurs within 5-10 years of exposure and results from high levels of exposure to respirable crystalline silica. The clinical presentation of accelerated silicosis is:

1.3.1. Symptoms - shortness of breath, cough, and sometimes sputum production. Employees with exposure to respirable crystalline silica, and especially those with accelerated silicosis, are at high risk for activation of TB infections, atypical mycobacterial infections, and fungal superinfections. Constitutional symptoms, such as fever, weight loss, hemoptysis (coughing up blood), and fatigue may herald one of these infections or the onset of lung cancer.

1.3.2. Physical Examination - rales, rhonchi, or other abnormal lung findings in relation to illnesses present. Clubbing of the digits, signs of heart failure, and cor pulmonale may be present in severe lung disease.

1.3.3. Spirometry - restrictive or mixed restrictive/obstructive pattern.

1.3.4. Chest X-ray - small rounded and/or irregular opacities bilaterally. Large opacities and lung abscesses may indicate infections, lung cancer, or progression to complicated silicosis, also termed progressive massive fibrosis.

1.3.5. Clinical Course - accelerated silicosis has a rapid, severe course. Under the respirable crystalline silica standard, the PLHCP can recommend referral to a Board Certified Specialist in either Pulmonary Disease or Occupational Medicine, as deemed appropriate, and referral to a Specialist is recommended whenever the diagnosis of accelerated silicosis is being considered.

1.4. Acute Silicosis. Acute silicosis is a rare disease caused by inhalation of extremely high levels of respirable crystalline silica particles. The pathology is similar to alveolar proteinosis with lipoproteinaceous material accumulating in the alveoli. Acute silicosis develops rapidly, often, within a few months to less than 2 years of exposure, and is almost always fatal. The clinical presentation of acute silicosis is as follows:

1.4.1. Symptoms - sudden, progressive, and severe shortness of breath. Constitutional symptoms are frequently present and include fever, weight loss, fatigue, productive cough, hemoptysis (coughing up blood), and pleuritic chest pain.

1.4.2. Physical Examination - dyspnea at rest, cyanosis, decreased breath sounds, inspiratory rales, clubbing of the digits, and fever.

1.4.3. Spirometry - restrictive or mixed restrictive/obstructive pattern.

1.4.4. Chest X-ray - diffuse haziness of the lungs bilaterally early in the disease. As the disease progresses, the "ground glass" appearance of interstitial fibrosis will appear.

1.4.5. Clinical Course - employees with acute silicosis are at especially high risk of TB activation, nontuberculous mycobacterial infections, and fungal superinfections. Acute silicosis is immediately life-threatening. The employee should be urgently referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for evaluation and treatment. Although any case of silicosis indicates a breakdown in prevention, a case of acute or accelerated silicosis implies a profoundly high level of silica exposure and may mean that other employees are currently exposed to dangerous levels of silica.

1.5. COPD. COPD, including chronic bronchitis and emphysema, has been documented in silica-exposed employees, including those who do not develop silicosis. Periodic spirometry tests are performed to evaluate each employee for progressive changes consistent with the development of COPD. In addition to evaluating spirometry results of individual employees over time, PLHCPs may want to be aware of general trends in spirometry results for groups of employees from the same workplace to identify possible problems that might exist at that workplace. (See Section 2 of this Appendix on Medical Surveillance for further discussion.) Heart disease may develop secondary to lung diseases such as COPD. A recent study by Liu et al. 2014 noted a significant exposure-response trend between cumulative silica exposure and heart disease deaths, primarily due to pulmonary heart disease, such as cor pulmonale.

1.6. Renal and Immune System. Silica exposure has been associated with several types of kidney disease, including glomerulonephritis, nephrotic syndrome, and end stage renal disease requiring dialysis. Silica exposure has also been associated with other autoimmune conditions, including progressive systemic sclerosis, systemic lupus erythematosus, and rheumatoid arthritis. Studies note an association between employees with silicosis and serologic markers for autoimmune diseases, including antinuclear antibodies, rheumatoid factor, and immune complexes (Jalloul and Banks 2007; Shtraichman et al. 2015).

1.7. TB and Other Infections. Silica-exposed employees with latent TB are 3 to 30 times as likely to develop active

pulmonary TB infection (ATS 1997; Rees and Murray 2007). Although respirable crystalline silica exposure does not cause TB infection, individuals with latent TB infection are at increased risk for activation of disease if they have higher levels of respirable crystalline silica exposure, greater profusion of radiographic abnormalities, or a diagnosis of silicosis. Demographic characteristics, such as immigration from some countries, are associated with increased rates of latent TB infection. PLHCPs can review the latest Centers for Disease Control and Prevention (CDC) information on TB incidence rates and high risk populations online. (See Section 5 of this Appendix.) Additionally, silica-exposed employees are at increased risk for contracting nontuberculous mycobacterial infections, including *Mycobacterium avium-intracellulare* and *Mycobacterium kansasii*.

1.8. Lung Cancer. The National Toxicology Program has listed respirable crystalline silica as a known human carcinogen since 2000 (NTP 2014). The International Agency for Research on Cancer (2012) has also classified silica as Group 1 (carcinogenic to humans). Several studies have indicated that the risk of lung cancer from exposure to respirable crystalline silica and smoking is greater than additive (Brown 2009; Liu et al. 2013). Employees should be counseled on smoking cessation.

## 2. Medical Surveillance.

PLHCPs who manage silica medical surveillance programs should have a thorough understanding of the many silica-related diseases and health effects outlined in Section 1 of this Appendix. At each clinical encounter, the PLHCP should consider silica-related health outcomes, with particular vigilance for acute and accelerated silicosis. In this Section, the required components of medical surveillance under the respirable crystalline silica standard are reviewed, along with additional guidance and recommendations for PLHCPs performing medical surveillance examinations for silica-exposed employees.

### 2.1. History.

2.1.1. The respirable crystalline silica standard requires the following: A medical and work history, with emphasis on: past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including signs and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); smoking status and history; and history of tuberculosis. The history of tuberculosis should include completion of the Washington State Department of Labor and Industries form F252-113-000, Adult Tuberculosis Screening Tool for Workers Exposed to Respirable Crystalline Silica, located in WAC 296-840-175, Appendix C.

2.1.2. Further, the employer must provide the PLHCP with the following information:

2.1.2.1. A description of the employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to respirable crystalline silica;

2.1.2.2. The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica;

2.1.2.3. A description of any personal protective equipment used or to be used by the employee, including when and for how long the employee has used or will use that equipment; and

2.1.2.4. Information from records of employment-related medical examinations previously provided to the employee and currently within the control of the employer.

2.1.3. Additional guidance and recommendations: A history is particularly important both in the initial evaluation and in periodic examinations. Information on past and current medical conditions (particularly a history of kidney disease, cardiac disease, connective tissue disease, and other immune diseases), medications, hospitalizations and surgeries may uncover health risks, such as immune suppression, that could put an employee at increased health risk from exposure to silica. This information is important when counseling the employee on risks and safe work practices related to silica exposure.

### 2.2. Physical Examination.

2.2.1. The respirable crystalline silica standard requires the following: A physical examination, with special emphasis on the respiratory system. The physical examination must be performed at the initial examination and every three years thereafter.

2.2.2. Additional guidance and recommendations: Elements of the physical examination that can assist the PLHCP include: an examination of the cardiac system, an extremity examination (for clubbing, cyanosis, edema, or joint abnormalities), and an examination of other pertinent organ systems identified during the history.

### 2.3. TB Testing.

2.3.1. The respirable crystalline silica standard requires the following: Baseline testing for TB on initial examination.

#### 2.3.2. Additional guidance and recommendations:

2.3.2.1. To assist the PLHCP with screening for tuberculosis, a tool is included in Appendix C: The Washington State Department of Labor and Industries form F252-113-000, Adult Tuberculosis Screening Tool for Workers Exposed to Respirable Crystalline Silica.

2.3.2.2. Current CDC guidelines (See Section 5 of this Appendix) should be followed for the application and interpretation of Tuberculin skin tests (TST). The interpretation and documentation of TST reactions should be performed within 48 to 72 hours of administration by trained PLHCPs.

2.3.2.3. PLHCPs may use alternative TB tests, such as interferon- $\gamma$  release assays (IGRAs), if sensitivity and specificity are comparable to TST (Mazurek et al. 2010; Slater et al. 2013). PLHCPs can consult the current CDC guidelines for acceptable tests for latent TB infection or refer to Appendix C: The Washington State Department of Labor and Industries form F252-113-000, Adult Tuberculosis Screening Tool for Workers Exposed to Respirable Crystalline Silica.

2.3.2.4. The silica standard allows the PLHCP to order additional tests or test at a greater frequency than required by the standard, if deemed appropriate. Therefore, PLHCPs might perform periodic (e.g., annual) TB testing as appropriate, based on employees' risk factors. For example, according to the American Thoracic Society (ATS), the diagnosis of silicosis or exposure to silica for 25 years or more are indications for annual TB testing (ATS 1997). PLHCPs should con-

sult the current CDC guidance on risk factors for TB (See Section 5 of this Appendix), and refer to Appendix C: The Washington State Department of Labor and Industries form F252-113-000, Adult Tuberculosis Screening Tool for Workers Exposed to Respirable Crystalline Silica.

2.3.2.5. Employees with positive TB tests and those with indeterminate test results should be referred to the appropriate agency or specialist, depending on the test results and clinical picture. Agencies, such as local public health departments, and the Washington State Department of Health or specialists, such as a pulmonary or infectious disease specialist, may be the appropriate referral. Active TB is a nationally notifiable disease. PLHCPs should be aware of the reporting requirements for their region. All States have TB Control Offices that can be contacted for further information. (See Section 5 of this Appendix for links to CDC's TB resources and State TB Control Offices.)

2.3.2.6. The following public health principles are key to TB control in the U.S. (ATS-CDC-IDSA 2005):

- (1) Prompt detection and reporting of persons who have contracted active TB;
- (2) Prevention of TB spread to close contacts of active TB cases;
- (3) Prevention of active TB in people with latent TB through targeted testing and treatment; and
- (4) Identification of settings at high risk for TB transmission so that appropriate infection-control measures can be implemented.

#### 2.4. Pulmonary Function Testing.

2.4.1. The respirable crystalline silica standard requires the following: Pulmonary function testing must be performed on the initial examination and every three years thereafter. The required pulmonary function test is spirometry and must include forced vital capacity (FVC), forced expiratory volume in one second (FEV1), and FEV1/FVC ratio. Testing must be administered by a spirometry technician with a current certificate from a National Institute for Occupational Health and Safety (NIOSH)-approved spirometry course.

2.4.2. Additional guidance and recommendations: Spirometry provides information about individual respiratory status and can be used to track an employee's respiratory status over time or as a surveillance tool to follow individual and group respiratory function. For quality results, the ATS and the American College of Occupational and Environmental Medicine (ACOEM) recommend use of the third National Health and Nutrition Examination Survey (NHANES III) values, and ATS publishes recommendations for spirometry equipment (Miller et al. 2005; Townsend 2011; Redlich et al. 2014). OSHA's publication, Spirometry Testing in Occupational Health Programs: Best Practices for Healthcare Professionals provides helpful guidance (See Section 5 of this Appendix). Abnormal spirometry results may warrant further clinical evaluation and possible recommendations for limitations on the employee's exposure to respirable crystalline silica.

#### 2.5. Chest X-ray.

2.5.1. The respirable crystalline silica standard requires the following: A single posteroanterior (PA) radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no

more than 16 x 17 inches) or digital radiography systems. A chest X-ray must be performed on the initial examination and every three years thereafter. The chest X-ray must be interpreted and classified according to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader. Chest radiography is necessary to diagnose silicosis, monitor the progression of silicosis, and identify associated conditions such as TB. If the B reading indicates small opacities in a profusion of 1/0 or higher, the employee is to receive a recommendation for referral to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine.

2.5.2. Additional guidance and recommendations: Medical imaging has largely transitioned from conventional film-based radiography to digital radiography systems. The ILO Guidelines for the Classification of Pneumoconioses has historically provided film-based chest radiography as a referent standard for comparison to individual exams. However, in 2011, the ILO revised the guidelines to include a digital set of referent standards that were derived from the prior film-based standards. To assist in assuring that digitally-acquired radiographs are at least as safe and effective as film radiographs, NIOSH has prepared guidelines, based upon accepted contemporary professional recommendations (See Section 5 of this Appendix). Current research from Laney et al. 2011 and Halldin et al. 2014 validate the use of the ILO digital referent images. Both studies conclude that the results of pneumoconiosis classification using digital references are comparable to film-based ILO classifications. Current ILO guidance on radiography for pneumoconioses and B-reading should be reviewed by the PLHCP periodically, as needed, on the ILO or NIOSH websites (See Section 5 of this Appendix).

#### 2.6. Other Testing.

Under the respirable crystalline silica standards, the PLHCP has the option of ordering additional testing he or she deems appropriate. Additional tests can be ordered on a case-by-case basis depending on individual signs or symptoms and clinical judgment. For example, if an employee reports a history of abnormal kidney function tests, the PLHCP may want to order a baseline renal function tests (e.g., serum creatinine and urinalysis). As indicated above, the PLHCP may order annual TB testing for silica-exposed employees who are at high risk of developing active TB infections. Additional tests that PLHCPs may order based on findings of medical examinations include, but is not limited to, chest computerized tomography (CT) scan for lung cancer or COPD, testing for immunologic diseases, and cardiac testing for pulmonary-related heart disease, such as cor pulmonale.

### 3. Roles and Responsibilities.

3.1. PLHCP. The PLHCP designation refers to "an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the particular health care services required" by the respirable crystalline silica standard. The legally permitted scope of practice for the PLHCP is determined by each State. PLHCPs who perform clinical services for a silica medical surveillance program should have a thorough knowledge of respirable crystalline silica-related dis-

eases and symptoms. Suspected cases of silicosis, advanced COPD, or other respiratory conditions causing impairment should be promptly referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine.

The medical surveillance program in this chapter is not intended to reduce a worker's legal rights or to limit a physician's obligations under Title 51 RCW.

Once the medical surveillance examination is completed, the employer must ensure that the PLHCP explains to the employee the results of the medical examination and provides the employee with a written medical report within 30 days of the examination. The written medical report must contain a statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment. In addition, the PLHCP's written medical report must include any recommended limitations on the employee's use of respirators, any recommended limitations on the employee's exposure to respirable crystalline silica, and a statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine if the chest X-ray is classified as 1/0 or higher by the B Reader, or if referral to a Specialist is otherwise deemed appropriate by the PLHCP.

The PLHCP should discuss all findings and test results and any recommendations regarding the employee's health, worksite safety and health practices, and medical referrals for further evaluation, if indicated. In addition, it is suggested that the PLHCP offer to provide the employee with a complete copy of their examination and test results, as some employees may want this information for their own records or to provide to their personal physician or a future PLHCP. Employees are entitled to access their medical records.

Under the respirable crystalline silica standard, the employer must ensure that the PLHCP provides the employer with a written medical opinion within 30 days of the employee examination, and that the employee also gets a copy of the written medical opinion for the employer within 30 days. The PLHCP may choose to directly provide the employee a copy of the written medical opinion. This can be particularly helpful to employees, such as construction employees, who may change employers frequently. The written medical opinion can be used by the employee as proof of up-to-date medical surveillance. The following lists the elements of the written medical report for the employee and written medical opinion for the employer. (Sample forms for the written medical report for the employee, the written medical opinion for the employer, and the written authorization are provided in Section 7 of this Appendix.)

3.1.1. The written medical report for the employee must include the following information:

3.1.1.1. A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment;

3.1.1.2. Any recommended limitations upon the employee's use of a respirator;

3.1.1.3. Any recommended limitations on the employee's exposure to respirable crystalline silica; and

3.1.1.4. A statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine, where the standard requires or where the PLHCP has determined such a referral is necessary. The standard requires referral to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for a chest X-ray B reading indicating small opacities in a profusion of 1/0 or higher, or if the PLHCP determines that referral to a Specialist is necessary for other silica-related findings.

3.1.2. The PLHCP's written medical opinion for the employer must include only the following information:

3.1.2.1. The date of the examination;

3.1.2.2. A statement that the examination has met the requirements of this chapter; and

3.1.2.3. Any recommended limitations on the employee's use of respirators.

3.1.2.4. If the employee provides the PLHCP with written authorization, the written opinion for the employer shall also contain either or both of the following:

(1) Any recommended limitations on the employee's exposure to respirable crystalline silica; and

(2) A statement that the employee should be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine if the chest X-ray provided in accordance with this chapter is classified as 1/0 or higher by the B Reader, or if referral to a Specialist is otherwise deemed appropriate.

3.1.2.5. In addition to the above referral for abnormal chest X-ray, the PLHCP may refer an employee to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for other findings of concern during the medical surveillance examination if these findings are potentially related to silica exposure.

3.1.2.6. Although the respirable crystalline silica standard requires the employer to ensure that the PLHCP explains the results of the medical examination to the employee, the standard does not mandate how this should be done. The written medical opinion for the employer could contain a statement that the PLHCP has explained the results of the medical examination to the employee.

3.2. Medical Specialists. The silica standard requires that all employees with chest X-ray B readings of 1/0 or higher be referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine. If the employee has given written authorization for the employer to be informed, then the employer shall make available a medical examination by a Specialist within 30 days after receiving the PLHCP's written medical opinion.

3.2.1. The employer must provide the following information to the Board Certified Specialist in Pulmonary Disease or Occupational Medicine:

3.2.1.1. A description of the employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to respirable crystalline silica;

3.2.1.2. The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica;

3.2.1.3. A description of any personal protective equipment used or to be used by the employee, including when and for how long the employee has used or will use that equipment; and

3.2.1.4. Information from records of employment-related medical examinations previously provided to the employee and currently within the control of the employer.

3.2.2. The PLHCP should make certain that, with written authorization from the employee, the Board Certified Specialist in Pulmonary Disease or Occupational Medicine has any other pertinent medical and occupational information necessary for the specialist's evaluation of the employee's condition.

3.2.3. Once the Board Certified Specialist in Pulmonary Disease or Occupational Medicine has evaluated the employee, the employer must ensure that the Specialist explains to the employee the results of the medical examination and provides the employee with a written medical report within 30 days of the examination. The employer must also ensure that the Specialist provides the employer with a written medical opinion within 30 days of the employee examination. (Sample forms for the written medical report for the employee, the written medical opinion for the employer and the written authorization are provided in Section 7 of this Appendix.)

3.2.4. The Specialist's written medical report for the employee must include the following information:

3.2.4.1. A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment;

3.2.4.2. Any recommended limitations upon the employee's use of a respirator; and

3.2.4.3. Any recommended limitations on the employee's exposure to respirable crystalline silica.

3.2.5. The Specialist's written medical opinion for the employer must include the following information:

3.2.5.1. The date of the examination; and

3.2.5.2. Any recommended limitations on the employee's use of respirators.

3.2.5.3. If the employee provides the Board Certified Specialist in Pulmonary Disease or Occupational Medicine with written authorization, the written medical opinion for the employer shall also contain any recommended limitations on the employee's exposure to respirable crystalline silica.

3.2.5.4. Although the respirable crystalline silica standard requires the employer to ensure that the Board Certified Specialist in Pulmonary Disease or Occupational Medicine explains the results of the medical examination to the employee, the standard does not mandate how this should be done. The written medical opinion for the employer could contain a statement that the Specialist has explained the results of the medical examination to the employee.

3.2.6. After evaluating the employee, the Board Certified Specialist in Pulmonary Disease or Occupational Medicine

should provide feedback to the PLHCP as appropriate, depending on the reason for the referral. OSHA believes that because the PLHCP has the primary relationship with the employer and employee, the Specialist may want to communicate his or her findings to the PLHCP and have the PLHCP simply update the original medical report for the employee and medical opinion for the employer. This is permitted under the standard, so long as all requirements and time deadlines are met.

3.3. Public Health Professionals. PLHCPs might refer employees or consult with public health professionals as a result of silica medical surveillance. For instance, if individual cases of active TB are identified, public health professionals from the Washington State Department of Health or local health departments may assist in diagnosis and treatment of individual cases and may evaluate other potentially affected persons, including coworkers. Because silica-exposed employees are at increased risk of progression from latent to active TB, treatment of latent infection is recommended. The diagnosis of active TB, acute or accelerated silicosis, or other silica-related diseases and infections should serve as sentinel events suggesting high levels of exposure to silica and may require consultation with the appropriate public health agencies to investigate potentially similarly exposed coworkers to assess for disease clusters. These agencies include local or state health departments or OSHA. In addition, NIOSH can provide assistance upon request through their Health Hazard Evaluation program. (See Section 5 of this Appendix.)

#### 4. Confidentiality and Other Considerations.

The information that is provided from the PLHCP to the employee and employer under the medical surveillance section of DOSH's respirable crystalline silica standard differs from that of medical surveillance requirements in previous DOSH standards. The standard requires two separate written communications, a written medical report for the employee and a written medical opinion for the employer. The confidentiality requirements for the written medical opinion are more stringent than in past standards. For example, the information the PLHCP can (and must) include in his or her written medical opinion for the employer is limited to: the date of the examination, a statement that the examination has met the requirements of this chapter, and any recommended limitations on the employee's use of respirators. If the employee provides written authorization for the disclosure of any limitations on the employee's exposure to respirable crystalline silica, then the PLHCP can (and must) include that information in the written medical opinion for the employer as well. Likewise, with the employee's written authorization, the PLHCP can (and must) disclose the PLHCP's referral recommendation (if any) as part of the written medical opinion for the employer. However, the opinion to the employer must not include information regarding recommended limitations on the employee's exposure to respirable crystalline silica or any referral recommendations without the employee's written authorization. Nor can the opinion for the employer include the confidential medical information gathered using the Adult Tuberculosis Screening Tool for Workers Exposed to

Respirable Crystalline Silica, found in Appendix C (WAC 296-840-175) of this standard.

The standard also places limitations on the information that the Board Certified Specialist in Pulmonary Disease or Occupational Medicine can provide to the employer without the employee's written authorization. The Specialist's written medical opinion for the employer, like the PLHCP's opinion, is limited to (and must contain): the date of the examination and any recommended limitations on the employee's use of respirators. If the employee provides written authorization, the written medical opinion can (and must) also contain any limitations on the employee's exposure to respirable crystalline silica.

The PLHCP should discuss the implication of signing or not signing the authorization with the employee (in a manner and language that he or she understands) so that the employee can make an informed decision regarding the written authorization and its consequences. The discussion should include the risk of ongoing silica exposure, personal risk factors, risk of disease progression, and possible health and economic consequences. For instance, written authorization is required for a PLHCP to advise an employer that an employee should be referred to a Board Certified Specialist in Pulmonary Disease or Occupational Medicine for evaluation of an abnormal chest X-ray (B-reading 1/0 or greater). If an employee does not sign an authorization, then the employer will not know and cannot facilitate the referral to a Specialist and is not required to pay for the Specialist's examination. In the rare case where an employee is diagnosed with acute or accelerated silicosis, co-workers are likely to be at significant risk of developing those diseases as a result of inadequate controls in the workplace. In this case, the PLHCP and/or Specialist should explain this concern to the affected employee and make a determined effort to obtain written authorization from the employee so that the PLHCP and/or Specialist can contact the employer.

Finally, without written authorization from the employee, the PLHCP and/or Board Certified Specialist in Pulmonary Disease or Occupational Medicine cannot provide feedback to an employer regarding control of workplace silica exposure, at least in relation to an individual employee. However, the regulation does not prohibit a PLHCP and/or Specialist from providing an employer with general recommendations regarding exposure controls and prevention programs in relation to silica exposure and silica-related illnesses, based on the information that the PLHCP receives from the employer such as employees' duties and exposure levels.

Recommendations may include increased frequency of medical surveillance examinations, additional medical surveillance components, engineering and work practice controls, exposure monitoring and personal protective equipment. For instance, more frequent medical surveillance examinations may be a recommendation to employers for employees who do abrasive blasting with silica because of the high exposures associated with that operation.

ACOEM's Code of Ethics and discussion is a good resource to guide PLHCPs regarding the issues discussed in this chapter. (See Section 5 of this Appendix.)

## 5. Resources.

5.1. American College of Occupational and Environmental Medicine (ACOEM): ACOEM Code of Ethics. Accessed at: <http://www.acoem.org/codeofconduct.aspx> Raymond, L.W. and Wintermeyer, S. (2006) ACOEM evidenced-based statement on medical surveillance of silica-exposed workers: medical surveillance of workers exposed to crystalline silica. *J Occup Environ Med*, 48, 95-101.

5.2. Center for Disease Control and Prevention (CDC) Tuberculosis web page: <http://www.cdc.gov/tb/default.htm>

State TB Control Offices web page: <http://www.cdc.gov/tb/links/tboffices.htm>

Tuberculosis Laws and Policies web page: <http://www.cdc.gov/tb/programs/laws/default.htm> CDC. (2013). Latent Tuberculosis Infection: A Guide for Primary Health Care Providers. Accessed at: <http://www.cdc.gov/tb/publications/ltbi/pdf/targetedltbi.pdf>

5.3. International Labour Organization.

International Labour Office (ILO). (2011) Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011. Occupational Safety and Health Series No. 22: [http://www.ilo.org/safework/info/publications/WCMS\\_168260/lang--en/index.htm](http://www.ilo.org/safework/info/publications/WCMS_168260/lang--en/index.htm)

5.4. National Institute of Occupational Safety and Health (NIOSH) NIOSH B Reader Program web page. (Information on interpretation of X-rays for silicosis and a list of certified B-readers.) Accessed at: <http://www.cdc.gov/niosh/topics/chestradiography/breader-info.html> NIOSH Guideline (2011). Application of Digital Radiography for the Detection and Classification of Pneumoconiosis. NIOSH publication number 2011-198. Accessed at: [http://www.cdc.gov/niosh/docs/2011-198/NIOSH\\_Hazard\\_Review\\_\(2002\),\\_Health\\_Effects\\_of\\_Occupational\\_Exposure\\_to\\_Respirable\\_Crystalline\\_Silica.\\_NIOSH\\_publication\\_number\\_2002-129](http://www.cdc.gov/niosh/docs/2011-198/NIOSH_Hazard_Review_(2002),_Health_Effects_of_Occupational_Exposure_to_Respirable_Crystalline_Silica._NIOSH_publication_number_2002-129): Accessed at [http://www.cdc.gov/niosh/docs/2002-129/NIOSH\\_Health\\_Hazard\\_Evaluations\\_Programs.\\_\(Information\\_on\\_the\\_NIOSH\\_Health\\_Hazard\\_Evaluation\\_\(HHE\)\\_program,\\_how\\_to\\_request\\_an\\_HHE\\_and\\_how\\_to\\_look\\_up\\_an\\_HHE\\_report.\)](http://www.cdc.gov/niosh/docs/2002-129/NIOSH_Health_Hazard_Evaluations_Programs._(Information_on_the_NIOSH_Health_Hazard_Evaluation_(HHE)_program,_how_to_request_an_HHE_and_how_to_look_up_an_HHE_report.)) Accessed at: <http://www.cdc.gov/niosh/hhe/>

5.5. National Industrial Sand Association:

Occupational Health Program for Exposure to Crystalline Silica in the Industrial Sand Industry. National Industrial Sand Association, 2nd ed. 2010. Can be ordered at: <http://www.sand.org/silica-occupational-health-program>

5.6. Occupational Safety and Health Administration (OSHA)

Contacting OSHA: [http://www.osha.gov/html/Feed\\_Back.html](http://www.osha.gov/html/Feed_Back.html)

OSHA's Clinicians web page. (OSHA resources, regulations and links to help clinicians navigate OSHA's web site and aid clinicians in caring for workers.) Accessed at: <http://www.osha.gov/dts/oom/clinicians/index.html>

OSHA's Safety and Health Topics webpage on Silica. Accessed at: [http://www.osha.gov/dsg/topics/silica\\_crystalline/index.html](http://www.osha.gov/dsg/topics/silica_crystalline/index.html)

OSHA (2013). Spirometry Testing in Occupational Health Programs: Best Practices for Healthcare Profession-

als. (OSHA 3637-03 2013.) Accessed at: <http://www.osha.gov/Publications/OSHA3637.pdf>

OSHA/NIOSH (2011). Spirometry: OSHA/NIOSH Spirometry InfoSheet (OSHA 3415-1-11). (Provides guidance to employers.) Accessed at <http://www.osha.gov/Publications/osha3415.pdf>

OSHA/NIOSH (2011) Spirometry: OSHA/NIOSH Spirometry Worker Info. (OSHA 3418-3-11). Accessed at <http://www.osha.gov/Publications/osha3418.pdf>

#### 5.7. Other.

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## 6. References.

American Thoracic Society (ATS). Medical Section of the American Lung Association (1997). Adverse effects of crystalline silica exposure. *Am J Respir Crit Care Med*, 155, 761-765.

American Thoracic Society (ATS), Centers for Disease Control (CDC), Infectious Diseases Society of America (IDSA) (2005). Controlling Tuberculosis in the United States. *Morbidity and Mortality Weekly Report (MMWR)*, 54(RR12), 1-81. Accessed at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5412a1.htm>

Brown, T. (2009). Silica exposure, smoking, silicosis and lung cancer - complex interactions. *Occupational Medicine*, 59, 89-95.

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**7. Sample Forms.**

Three sample forms are provided. The first is a sample written medical report for the employee. The second is a sample written medical opinion for the employer. And the third is a sample written authorization form that employees sign to clarify what information the employee is authorizing to be released to the employer.

**8. Washington State Reporting Requirements for Tuberculosis.**

Active TB disease is a reportable condition in all Washington state counties. Current statewide requirements for notifiable conditions are found in WAC 246-101-101. Contact your local health department immediately to report or obtain assistance regarding any confirmed or suspected cases of active TB disease.

Latent TB infection may be a reportable condition in your Washington state county. Contact your local health department for more information on local reporting requirements, or to obtain assistance with the evaluation and management of latent TB infection.

WRITTEN MEDICAL REPORT FOR EMPLOYEE

EMPLOYEE NAME: \_\_\_\_\_ DATE OF EXAMINATION: \_\_\_\_\_

TYPE OF EXAMINATION:

[ ] Initial examination [ ] Periodic examination [ ] Specialist examination
[ ] Other: \_\_\_\_\_

RESULTS OF MEDICAL EXAMINATION:

Physical Examination - [ ] Normal [ ] Abnormal (see below) [ ] Not performed
Chest X-Ray - [ ] Normal [ ] Abnormal (see below) [ ] Not performed
Breathing Test (Spirometry) - [ ] Normal [ ] Abnormal (see below) [ ] Not performed
Test for Tuberculosis - [ ] Normal [ ] Abnormal (see below) [ ] Not performed
Other: \_\_\_\_\_ [ ] Normal [ ] Abnormal (see below) [ ] Not performed

Results reported as abnormal: \_\_\_\_\_

[ ] Your health may be at increased risk from exposure to respirable crystalline silica due to the following:

RECOMMENDATIONS:

[ ] No limitations on respirator use
[ ] Recommended limitations on use of respirator: \_\_\_\_\_
[ ] Recommended limitations on exposure to respirable crystalline silica: \_\_\_\_\_

Dates for recommended limitations, if applicable: \_\_\_\_\_ to \_\_\_\_\_
MM/DD/YYYY MM/DD/YYYY

[ ] I recommend that you be examined by a Board Certified Specialist in Pulmonary Disease or Occupational Medicine

[ ] Other recommendations\*: \_\_\_\_\_

Your next periodic examination for silica exposure should be in: [ ] 3 years [ ] Other: \_\_\_\_\_

Examining Provider: \_\_\_\_\_ Date: \_\_\_\_\_
(signature) MM/DD/YYYY

Provider Name: \_\_\_\_\_ Office Phone: \_\_\_\_\_
Office Address: \_\_\_\_\_

\*These findings may not be related to respirable crystalline silica exposure or may not be work-related, and therefore may not be covered by the employer. These findings may necessitate follow-up and treatment by your personal physician.

Respirable Crystalline Silica standard, chapter 296-840 WAC.

WRITTEN MEDICAL OPINION FOR EMPLOYER

EMPLOYER: \_\_\_\_\_

EMPLOYEE NAME: \_\_\_\_\_ DATE OF EXAMINATION: \_\_\_\_\_

TYPE OF EXAMINATION:

[ ] Initial examination [ ] Periodic examination [ ] Specialist examination
[ ] Other: \_\_\_\_\_

USE OF RESPIRATOR:

[ ] No limitations on respirator use
[ ] Recommended limitations on use of respirator: \_\_\_\_\_

Dates for recommended limitations, if applicable: \_\_\_\_\_ to \_\_\_\_\_
MM/DD/YYYY MM/DD/YYYY

The employee has provided written authorization for disclosure of the following to the employer (if applicable):

[ ] This employee should be examined by an American Board Certified Specialist in Pulmonary Disease or Occupational
Medicine
[ ] Recommended limitations on exposure to respirable crystalline silica: \_\_\_\_\_

Dates for exposure limitations noted above: \_\_\_\_\_ to \_\_\_\_\_
MM/DD/YYYY MM/DD/YYYY

NEXT PERIODIC EVALUATION: [ ] 3 years [ ] Other: \_\_\_\_\_
MM/DD/YYYY

Examining Provider: \_\_\_\_\_ Date: \_\_\_\_\_
(signature)

Provider Name: \_\_\_\_\_ Provider's Specialty: \_\_\_\_\_

Office Address: \_\_\_\_\_ Office Phone: \_\_\_\_\_

[ ] I attest that the results have been explained to the employee.

The following is required to be checked by the Physician or other Licensed Health Care Professional (PLHCP):

[ ] I attest that this medical examination has met the requirements of the medical surveillance section of the DOSH
Respirable Crystalline Silica standard, WAC 296-840-145.

**AUTHORIZATION FOR CRYSTALLINE SILICA OPINION TO EMPLOYER**

This medical examination for exposure to crystalline silica could reveal a medical condition that results in recommendations for (1) limitations on respirator use, (2) limitations on exposure to crystalline silica, or (3) examination by a specialist in pulmonary disease or occupational medicine. Recommended limitations on respirator use will be included in the written opinion to the employer. If you want your employer to know about limitations on crystalline silica exposure or recommendations for a specialist examination, you will need to give authorization for the written opinion to the employer to include one or both of those recommendations.

I hereby authorize the opinion to the employer to contain the following information, if relevant (please check all that apply):

Recommendations for limitations on crystalline silica exposure

Recommendation for a specialist examination

OR

I do not authorize the opinion to the employer to contain anything other than recommended limitations on respirator use.

Please read and initial:

\_\_\_\_\_ I understand that if I do not authorize my employer to receive the recommendation for specialist examination, the employer will not be responsible for arranging and covering costs of a specialist examination.

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NEW SECTION**WAC 296-840-175 Appendix C—Adult tuberculosis screening tool for workers exposed to respirable crystalline silica—Nonmandatory.**

Screening is the identification of those individuals—among a group with unknown disease status— who are likely to have a given medical condition. Because exposure to respirable crystalline silica increases the risk of developing active tuberculosis (TB) disease in workers who have latent TB infection, this standard requires that the physician or other licensed health care professional (PLHCP) conduct TB screening as part of both initial (baseline) and periodic examinations.

Persons undergoing TB screening do not necessarily require testing for latent TB infection:

- The PLHCP must offer testing for latent TB infection as part of initial (baseline) examinations.
- The PLHCP has discretion whether to offer testing for latent TB infection as part of periodic examinations.

The following TB screening tool is designed to help the PLHCP identify:

- workers who should undergo comprehensive evaluation for active TB disease (**section 1 of this form in this appendix**); and
- workers who should receive testing for latent TB infection (**section 2 of this form in this appendix.**)

Active TB disease is a reportable condition in all Washington State counties. Current statewide requirements for notifiable conditions are found at WAC 246-101-101. Contact your local health department immediately to report or obtain assistance regarding any confirmed or suspected cases of active TB disease.

Latent TB infection may be a reportable condition in your Washington State county. Contact your local health department for more information on local reporting requirements, or to obtain assistance with the evaluation and management of latent TB infection.

As a decision aid for the PLHCP, this tool does not supersede the PLHCP's determination of which additional tests are offered to an employee under the medical surveillance section of Chapter 296-840 WAC, beyond those tests the standard requires. The employee medical information gathered using the screening tool is confidential and cannot be included in the written medical opinion for employers. Section 4 of Appendix B (WAC 296-840-170) contains additional considerations on confidentiality under the medical surveillance section of Chapter 296-840 WAC.

The complete medical surveillance requirements for examinations and procedures under this chapter are described at WAC 296-840-145.



**Adult Tuberculosis Screening Tool for Workers Exposed to Respirable Crystalline Silica**

|                 |
|-----------------|
| Provider's Name |
| Assessment Date |

|                |
|----------------|
| Patient's Name |
| Date of Birth  |

For use in meeting medical surveillance requirements per WAC 296-840-145.

This tool is designed to help providers identify:

- Adult workers who should undergo comprehensive evaluation for **active** tuberculosis (TB) disease (**Section 1**), *AND*
- Adult workers who should receive testing for **latent** TB infection (**Section 2**).

| <b>Section 1 — Symptom Screen for Active TB Disease</b>  |  |
|--|--|
| <p>Workers who have any of the following symptoms may require further evaluation for active TB disease. This tool is intended to be an adjunct to clinical evaluation and is not a substitute for exercising sound clinical judgement. Responses should be considered in clinical context and should not automatically result in a comprehensive evaluation for active TB disease, unless indicated.</p> <p><b>Signs and symptoms consistent with active TB disease in the lung, pleura, airways, or larynx.<sup>1</sup></b></p> |  |
| <input type="checkbox"/> Cough (longer than 3 weeks)<br><input type="checkbox"/> Coughing Up Blood<br><input type="checkbox"/> Fever<br><input type="checkbox"/> Night Sweats<br><input type="checkbox"/> Unusual Fatigue  | <input type="checkbox"/> Weight Loss (without trying)<br><input type="checkbox"/> Loss of Appetite<br><input type="checkbox"/> Shortness of Breath<br><input type="checkbox"/> Chest Pain<br><input type="checkbox"/> Hoarseness |
| <p>For patients with clinical circumstances that require additional evaluation for active TB disease, consider the following: chest x-ray if not already obtained, sputum AFB smears, cultures and nucleic acid amplification.</p> <p>A negative tuberculin skin test (TST) or interferon gamma release assay (IGRA) does not rule out active TB disease, but these tests can be useful for making the diagnosis and should be considered.</p>   |  |

**Continue to Page 2 to Begin Evaluation for Latent TB infection Testing**

Adapted from the Washington State Department of Health Adult Tuberculosis Risk Assessment and Symptoms Screening

<sup>1</sup> Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005, 54 (No.RR-17): 16.

|                 |                |
|-----------------|----------------|
| Provider's Name | Patient's Name |
| Assessment Date | Date of Birth  |

| <b>Section 2 — Risk Assessment for <i>Latent TB Infection</i></b>  |
|--|
| <b>Latent Tuberculosis Infection (LTBI) Testing</b> is recommended if any of the eight boxes in the following Risk Assessment are checked.   |
| <b>If LTBI test result is positive and active TB disease is ruled out, LTBI treatment is recommended.</b>  |
| Retesting should generally only be done in persons with a previous negative test who have <b>new</b> risk factors since the last assessment.   |
| <b>Risk Assessment:</b> Check appropriate risk factor boxes below. <sup>ii</sup>   |
| <input type="checkbox"/> Worker is undergoing initial (baseline) medical examination per WAC 296-840-145.  |
| <input type="checkbox"/> Foreign-born person from a country with an elevated TB rate. <ul style="list-style-type: none"> <li>• Includes any country other than the United States, Canada, Australia, New Zealand, or a country in western or northern Europe.</li> <li>• Interferon gamma release assay (IGRA) is preferred over tuberculin skin test (TST) for foreign-born persons.</li> </ul> |
| <input type="checkbox"/> Immunosuppression — current or planned. <ul style="list-style-type: none"> <li>• HIV infection, organ transplant recipient, treated with TNF-alpha antagonist (e.g. infliximab, etanercept, others), steroids (equivalent of prednisone ≥ 15 mg/day for ≥ 1 month), or other immunosuppressive medication.</li> </ul>   |
| <input type="checkbox"/> Close contact to someone with infectious TB disease at any time.  |
| <input type="checkbox"/> Certain foreign travel. <ul style="list-style-type: none"> <li>• Travel to countries with an elevated TB rate may be a risk for TB exposure in certain circumstances (e.g. extended duration, likely contact with infectious TB cases, high prevalence of TB in travel location, non-tourist travel).</li> </ul>  |
| <input type="checkbox"/> Diagnosis of silicosis.   |
| <input type="checkbox"/> Exposure to respirable crystalline silica for 25 years or more.   |
| <input type="checkbox"/> Other risk factor: _____  |
| <b>Latent Tuberculosis Infection (LTBI) Testing</b> is recommended if any of the eight boxes in the Risk Assessment are checked.   |
| <b>IGRA testing for LTBI is preferred in BCG vaccinated persons:</b> because IGRA has increased specificity of TB infection in persons vaccinated with BCG, IGRA is preferred over the TST in these persons. Most persons born outside the United States have been vaccinated with BCG.  |

**Continue to Page 4 to Complete Risk Assessment for *Latent TB Infection Testing***

<sup>ii</sup> This list is not exhaustive. For additional information, see the Washington State Department of Health Adult TB Risk Assessment User Guide ([www.doh.wa.gov](http://www.doh.wa.gov)).

**If LTBI test result is positive and active TB disease is ruled out, LTBI treatment is recommended.**

In persons at low risk for tuberculosis infection and disease progression, **confirmatory testing is recommended if the initial test for LTBI is positive:**<sup>iii</sup>

- Either a TST or an IGRA may be used for the second (confirmatory) test,
  - but if the TST is the initial positive test, it should not be used as the confirmatory test due to potential side-effects.
- Persons at low risk are only considered to have LTBI if both tests are positive.
  - Discordant testing is likely due to false positive results in persons at low risk.

*As used by this tool, low risk refers to patients who have no identified risk factors for either 1. having acquired TB infection (e.g. foreign-born person from a country with an elevated TB rate), or 2. having excess risk of disease progression (e.g., current or planned immunosuppression).*<sup>iv,v</sup>

<sup>iii</sup> Lewinsohn et al. 2017. *Official American Thoracic Society/Infectious Diseases Society of America/Centers for Disease Control and Prevention Clinical Practice Guidelines: Diagnosis of Tuberculosis in Adults and Children*. Clin Infect Dis 64(2): e1-e33.

<sup>iv</sup> Ibid.

<sup>v</sup> See *DOH Adult TB Risk Assessment User Guide*. Please request from the Washington State Department of Health.

Hearing Location(s): On October 9, 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 October 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., October 9, 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](mailto:Kildaja@dshs.wa.gov), by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Substantive changes to the proposed companion home rules address the following subjects: The application and certification processes to become a companion home provider; the process for determining the provider's daily rate; provider responsibilities while using respite; the process for determining a companion home client's annual respite allocation; when a companion home provider may request additional respite hours; the effect of additional respite hours on the provider's daily rate; violations of the room and board agreement; requiring an individual financial plan; transferring client funds; protecting clients from water hazards; records the provider must maintain; and informal dispute resolution processes. Most of the chapter has been rewritten to clarify requirements, and some sections have been repealed with the content added to other sections.

Reasons Supporting Proposal: The developmental disabilities administration (DDA) is proposing to amend chapter 388-829C WAC to make several policy updates to how residential habilitation services are delivered in the companion home setting. These amendments are necessary because these rules have not been updated in seven or more years. See purpose statement above for a list of substantive changes.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.009(5), 71A.12.040, 71A.10.020.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Kelly Hampton, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1514.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email [Chantelle.Diaz@dshs](mailto:Chantelle.Diaz@dshs).

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(5) because the department prepared an analysis under RCW 34.05.328.

Explanation of exemptions: The proposed amendments do not impose more-than-minor costs on small businesses so a small business economic impact statement is not required.

August 16, 2018  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-18 issue of the Register.

**WSR 18-17-157**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 21, 2018, 12:02 p.m.]

Continuance of WSR 18-10-079.

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): September 27, 2018, at 8:30, at the DoubleTree, 322 North Spokane Falls Court, Spokane, WA 99201.

Date of Intended Adoption: September 27, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email [david.brenna@k12.wa.us](mailto:david.brenna@k12.wa.us), fax 360-586-4548, by September 19, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email [david.brenna@k12.wa.us](mailto:david.brenna@k12.wa.us), by September 19, 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 (PESB), Catherine Slagle, director of OPP, office of superintendent of public instruction (OSPI), 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.



Griffith, 2404 Chandler Court S.W., Olympia, WA 98504, 360-705-7070.

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 required per subsection (5)(b)(vi), as setting or adjusting fees or rates pursuant to legislative standards established in RCW 47.56.850.

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 21, 2018  
Reema Griffith  
Executive Director

**AMENDATORY SECTION** (Amending WSR 16-11-091, filed 5/18/16, effective 7/1/16)

**WAC 468-270-040 How are the tolls determined and adjusted?** In determining toll amounts, the transportation commission considers data and information provided by the department of transportation, public opinion and advice from any required citizen advisory committee.

(1) Tacoma Narrows Bridge. In accordance with chapter 47.46 RCW, the commission must consider the toll rate advice of the citizen advisory committee and must set toll amounts that cover the debt and operations and maintenance until the indebtedness is repaid as required by law.

(2) SR 520 Bridge. The commission must consider toll rates that will help maintain travel time, speed, and reliability on the corridor and must set and adjust toll rates to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850.

(3) SR 99 Tunnel.

(a) The commission must consider toll rates that will help maintain travel time, speed, and reliability on the tunnel and must set and adjust toll rates to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850.

(b) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be set as follows:

(i) All two-axle Good To Go!™ toll rates shall increase by three percent, rounded to the nearest five cent interval.

(ii) All two-axle Pay By Mail toll rates shall be set to two dollars more than the revised two-axle Good To Go!™ toll rates.

(iii) All multi-axle Good To Go!™ and Pay By Mail toll rates shall be set equal to one-half the revised two-axle rates, multiplied by the number of axles up to a maximum of six axles, and rounded to the nearest five cent interval.

(4) I-405 express toll lanes.

(a) The commission must consider a schedule of toll rates that will maintain travel time, speed, and reliability on the corridor as described in RCW 47.56.850 and 47.56.880. The schedule adopted by the commission will allow toll rates to vary in amount by time of day, level of traffic congestion within the highway facility, and other criteria.

(b) The commission must set a minimum and a maximum toll rate, each subject to review on an annual basis or as needed to maintain performance requirements outlined in RCW 47.56.880.

(c) The commission must set an additional fixed amount to be added to the toll rate for vehicles that are not registered for a Good To Go!™ account who pay the Pay By Mail toll rate.

**AMENDATORY SECTION** (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

**WAC 468-270-050 What toll facilities are currently subject to this chapter?** Currently, the Tacoma Narrows Bridge, SR 167 HOT lanes, SR 520 Bridge, the SR 99 Tunnel, and the I-405 express toll lanes.

**NEW SECTION**

**WAC 468-270-073 What are the toll rates on the SR 99 Tunnel?** (1) Tables 7 through 11 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(2) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be increased as described in WAC 468-270-040 (3)(b).

TABLE 7  
SR 99 TUNNEL  
TWO-AXLE VEHICLE TOLL RATES

| Mondays through Fridays | Good To Go!™ Pass <sup>1</sup> | Pay By Mail <sup>1</sup> | Good To Go!™ Pay By Plate <sup>2</sup> |
|-------------------------|--------------------------------|--------------------------|--|
| Midnight to 6 a.m.      | \$1.00                         | \$3.00                   | \$1.25                                 |
| 6 a.m. to 7 a.m.        | \$1.25                         | \$3.25                   | \$1.50                                 |
| 7 a.m. to 9 a.m.        | \$1.50                         | \$3.50                   | \$1.75                                 |
| 9 a.m. to 3 p.m.        | \$1.25                         | \$3.25                   | \$1.50                                 |
| 3 p.m. to 6 p.m.        | \$2.25                         | \$4.25                   | \$2.50                                 |
| 6 p.m. to 11 p.m.       | \$1.25                         | \$3.25                   | \$1.50                                 |

| <b>Mondays through Fridays</b> | <b>Good To Go!™ Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!™ Pay By Plate<sup>2</sup></b> |
|--------------------------------|--------------------------------------|--------------------------------|--|
| 11 p.m. to midnight            | \$1.00                               | \$3.00                         | \$1.25                                       |

| <b>Saturdays and Sundays<sup>3</sup></b> | <b>Good To Go!™ Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!™ Pay By Plate<sup>2</sup></b> |
|--|--------------------------------------|--------------------------------|--|
| Midnight to Midnight                     | \$1.00                               | \$3.00                         | \$1.25                                       |

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.

<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 8**  
**SR 99 TUNNEL**  
**THREE-AXLE VEHICLE TOLL RATES**

| <b>Mondays through Fridays</b> | <b>Good To Go!™ Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!™ Pay By Plate<sup>2</sup></b> |
|--------------------------------|--------------------------------------|--------------------------------|--|
| Midnight to 6 a.m.             | \$1.50                               | \$4.50                         | \$1.75                                       |
| 6 a.m. to 7 a.m.               | \$1.90                               | \$4.90                         | \$2.15                                       |
| 7 a.m. to 9 a.m.               | \$2.25                               | \$5.25                         | \$2.50                                       |
| 9 a.m. to 3 p.m.               | \$1.90                               | \$4.90                         | \$2.15                                       |
| 3 p.m. to 6 p.m.               | \$3.40                               | \$6.40                         | \$3.65                                       |
| 6 p.m. to 11 p.m.              | \$1.90                               | \$4.90                         | \$2.15                                       |
| 11 p.m. to midnight            | \$1.50                               | \$4.50                         | \$1.75                                       |

| <b>Saturdays and Sundays<sup>3</sup></b> | <b>Good To Go!™ Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!™ Pay By Plate<sup>2</sup></b> |
|--|--------------------------------------|--------------------------------|--|
| Midnight to Midnight                     | \$1.50                               | \$4.50                         | \$1.75                                       |

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.

<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 9**  
**SR 99 TUNNEL**  
**FOUR-AXLE VEHICLE TOLL RATES**

| <b>Mondays through Fridays</b> | <b>Good To Go!™ Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!™ Pay By Plate<sup>2</sup></b> |
|--------------------------------|--------------------------------------|--------------------------------|--|
| Midnight to 6 a.m.             | \$2.00                               | \$6.00                         | \$2.25                                       |
| 6 a.m. to 7 a.m.               | \$2.50                               | \$6.50                         | \$2.75                                       |
| 7 a.m. to 9 a.m.               | \$3.00                               | \$7.00                         | \$3.25                                       |
| 9 a.m. to 3 p.m.               | \$2.50                               | \$6.50                         | \$2.75                                       |
| 3 p.m. to 6 p.m.               | \$4.50                               | \$8.50                         | \$4.75                                       |
| 6 p.m. to 11 p.m.              | \$2.50                               | \$6.50                         | \$2.75                                       |
| 11 p.m. to midnight            | \$2.00                               | \$6.00                         | \$2.25                                       |

| <b>Saturdays and Sundays<sup>3</sup></b> | <b>Good To Go!<sup>TM</sup> Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!<sup>TM</sup> Pay By Plate<sup>2</sup></b> |
|--|--|--------------------------------|--|
| Midnight to Midnight                     | \$2.00   | \$6.00                         | \$2.25   |

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!<sup>TM</sup> Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 10**  
**SR 99 TUNNEL**  
**FIVE-AXLE VEHICLE TOLL RATES**

| <b>Mondays through Fridays</b> | <b>Good To Go!<sup>TM</sup> Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!<sup>TM</sup> Pay By Plate<sup>2</sup></b> |
|--------------------------------|--|--------------------------------|--|
| Midnight to 6 a.m.             | \$2.50   | \$7.50                         | \$2.75   |
| 6 a.m. to 7 a.m.               | \$3.15   | \$8.15                         | \$3.40   |
| 7 a.m. to 9 a.m.               | \$3.75   | \$8.75                         | \$4.00   |
| 9 a.m. to 3 p.m.               | \$3.15   | \$8.15                         | \$3.40   |
| 3 p.m. to 6 p.m.               | \$5.65   | \$10.65                        | \$5.90   |
| 6 p.m. to 11 p.m.              | \$3.15   | \$8.15                         | \$3.40   |
| 11 p.m. to midnight            | \$2.50   | \$7.50                         | \$2.75   |

| <b>Saturdays and Sundays<sup>3</sup></b> | <b>Good To Go!<sup>TM</sup> Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!<sup>TM</sup> Pay By Plate<sup>2</sup></b> |
|--|--|--------------------------------|--|
| Midnight to Midnight                     | \$2.50   | \$7.50                         | \$2.75   |

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!<sup>TM</sup> Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 11**  
**SR 99 TUNNEL**  
**SIX-AXLE VEHICLE TOLL RATES**

| <b>Mondays through Fridays</b> | <b>Good To Go!<sup>TM</sup> Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!<sup>TM</sup> Pay By Plate<sup>2</sup></b> |
|--------------------------------|--|--------------------------------|--|
| Midnight to 6 a.m.             | \$3.00   | \$9.00                         | \$3.25   |
| 6 a.m. to 7 a.m.               | \$3.75   | \$9.75                         | \$4.00   |
| 7 a.m. to 9 a.m.               | \$4.50   | \$10.50                        | \$4.75   |
| 9 a.m. to 3 p.m.               | \$3.75   | \$9.75                         | \$4.00   |
| 3 p.m. to 6 p.m.               | \$6.75   | \$12.75                        | \$7.00   |
| 6 p.m. to 11 p.m.              | \$3.75   | \$9.75                         | \$4.00   |
| 11 p.m. to midnight            | \$3.00   | \$9.00                         | \$3.25   |

| <b>Saturdays and Sundays<sup>3</sup></b> | <b>Good To Go!<sup>TM</sup> Pass<sup>1</sup></b> | <b>Pay By Mail<sup>1</sup></b> | <b>Good To Go!<sup>TM</sup> Pay By Plate<sup>2</sup></b> |
|--|--|--------------------------------|--|
| Midnight to Midnight                     | \$3.00   | \$9.00                         | \$3.25   |

- Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.
- <sup>2</sup>For this type of payment method, the customer is charged the Good to Go!<sup>TM</sup> Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
- <sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

**WAC 468-270-080 When are toll rates in effect?** The toll rates for each facility take effect upon commencement of the tolling program on each new toll facility. Check the WSDOT web site at [wsdot.wa.gov/goodtogo](http://wsdot.wa.gov/goodtogo) for updated information on the opening dates for the tolling programs. Unless otherwise required by law, the collection of tolls on a facility will remain in effect until changed by the commission.

(1) For the Tacoma Narrows Bridge toll rates will remain in effect until changed by the commission or removed due to final repayment of the project as provided by law.

(2) For the SR 167 HOT lanes, the tolls will remain in effect until changed by the commission.

(3) For the SR 520 Bridge, the tolls will take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational as described in the note following RCW 47.56.795.

(4) For the I-405 express toll lanes, the toll rate schedule will remain in effect until changed by the commission.

(5) For the SR 99 Tunnel, the toll rate schedule will remain in effect until changed by the commission.

**WSR 18-17-166  
PROPOSED RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2018-01—Filed August 21, 2018,  
3:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-052.

Title of Rule and Other Identifying Information: Short-term limited duration medical plans.

Hearing Location(s): On September 26, 2018, at 1:00 p.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: October 5, 2018.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by September 24, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email [LorieV@oic.wa.gov](mailto:LorieV@oic.wa.gov), by September 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule on short-term limited duration medical plans clarifies the

insurance commissioner's process and standards relative to the filing and sale of short-term limited duration medical plans in Washington state. It will restore in large part federal rules previously in place from 2016 to date that limited the duration of short-term limited duration health insurance to three months. It establishes minimum standards for coverage offered through short-term limited duration medical plans, establishes requirements related to consumer disclosure, provides for prior approval of short-term limited duration medical plan forms and rates, and defines the circumstances under which those medical plans can be cancelled or rescinded.

Reasons Supporting Proposal: The proposal is in response to final rules adopted by the federal Departments of Treasury, Labor and Health and Human Services related to short-term limited duration insurance. Short-term limited duration insurance is exempt from many of the health insurance reforms included in the Affordable Care Act (ACA). The final federal rule was adopted on August 3, 2018. The effective date of the rule is October 2, 2018. The federal rule expands the term of short-term limited duration health insurance to up to one year, expands the duration of such insurance policies to up to thirty-six months, and allows consumers to purchase a new policy after expiration of a previous policy. The rule allows states to adopt shorter periods for the term and duration of short-term limited duration insurance, and to impose additional requirements related to the insurance policies and consumer notices.

Short-term limited duration medical plans are designed to fill gaps in coverage for individuals who need access to "stop gap" coverage pending a transition to comprehensive coverage through, for example, employer-sponsored coverage, an upcoming individual market open enrollment period or medicare coverage. Under the ACA, individuals have the opportunity to enroll in individual health insurance outside of the annual open enrollment period if they experience qualifying events, such as having a child, losing student health insurance or losing their employer-sponsored health insurance.

Short-term limited duration medical plans are exempt from many requirements of the ACA. Carriers offering these plans can deny coverage based on health status. The plans can exclude coverage of preexisting medical and behavioral health conditions, do not have to offer ACA essential health benefits and can set limits on annual and lifetime coverage.

Short-term limited duration coverage should not be considered a substitute for comprehensive benefits available through the ACA individual health insurance market or group health coverage.

Statutory Authority for Adoption: RCW 48.43.005(26), 48.02.060, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.43.005(26).

Rule is necessary because of federal law, 26 C.F.R. 54.9801-2, 29 C.F.R. 2590.701-2 and 45 C.F.R. 144.103.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7117; and Enforcement: Doug Hartz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214.

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 Zachary Mason, P.O. Box 40258, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.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 19.85.025(4).

Explanation of exemptions: The health insurance issuers that are affected by this rule are not small businesses as defined by RCW 19.85.020(2).

August 21, 2018

Mike Kreidler

Insurance Commissioner

## SUBCHAPTER L

### SHORT-TERM LIMITED DURATION MEDICAL PLANS

#### NEW SECTION

**WAC 284-43-8000 Definition of short-term limited duration medical plan.** (1) "Short-term limited duration medical plan" means a policy, contract or agreement offered or issued by a health carrier with an effective date on or after January 1, 2019, that:

(a) Provides comprehensive major medical coverage, that includes, at a minimum, the following benefits:

(i) Hospital, surgical and medical expense coverage, to an aggregate maximum of not less than one million dollars and copayment or coinsurance by the covered person not to exceed fifty percent of covered charges;

(ii) The coverage for hospital services must include:

(A) Inpatient services and other miscellaneous services associated with admission to a hospital for diagnosis and treatment of a covered condition. "Miscellaneous services" includes medically necessary services delivered in a hospital setting, including professional services, anesthesia, facility fees, supplies, imaging, laboratory, pharmacy services and prescription drugs, treatments, therapy, or other services delivered on an inpatient basis;

(B) Outpatient services, including medically necessary services ordered by the member's attending health care practitioner and rendered on an ambulatory basis for diagnosis and treatment of a covered condition, including office and clinic visits, diagnostic imaging, laboratory services, radiation therapy, physical/speech/occupational therapy, and hemodialysis; and

(C) An extension of the medical plan term while hospitalized. If a member is hospitalized as an inpatient on the expiration date of the medical plan, the member's coverage under the medical plan will continue for purposes of that covered medical condition without payment of additional premium. The coverage will continue until the date the member is discharged from the hospital or until the date on which the applicable benefit maximums are reached, whichever occurs first.

(iii) The coverage for surgical services for diagnosis and treatment of a covered condition must include inpatient and outpatient surgical services at a hospital, ambulatory surgical facility, surgical suite or provider's office. "Surgical services" includes medically necessary services delivered in a hospital, ambulatory surgical facility, surgical suite or provider's office related to provision of a surgical service, including professional services, anesthesiology, facility fees, supplies, laboratory, pharmacy services and prescription drugs related to, or required as a result of, the surgical procedure; and

(iv) The coverage for medical services for diagnosis and treatment of a covered condition must include office visits.

(b) Limits the look-back period for any preexisting medical condition, illness or injury to no more than twenty-four months prior to the date of application for the medical plan, if coverage of preexisting conditions is excluded. For purposes of this section, "preexisting medical condition" means a condition for which medical advice, diagnosis, care or treatment was received or recommended; and

(c) Has an expiration date specified in the contract (taking into account any extensions that may be elected by the member with or without the carrier's consent) that is not more than three months after the original effective date of the policy, contract or agreement.

(2) Any carrier offering a short-term limited duration medical plan must offer at least one such plan with a deductible stated on a per person basis of two thousand dollars or less.

(3) A short-term limited duration medical plan cannot be issued if it would result in a person being covered by a short-term limited duration medical plan for more than three months in any twelve-month period.

(4) A carrier must not issue a short-term limited duration medical plan during an annual open enrollment period, as defined in WAC 284-43-1080, for coverage beginning in the upcoming year.

(5) Short-term limited duration medical plan has the same meaning as short-term limited duration insurance, as used in 26 C.F.R. 54.9801-2, 29 C.F.R. 2590.701-2 and 45 C.F.R. 144.103, except that:

(a) The duration of a short-term limited duration medical plan cannot exceed three months;

(b) A short-term limited duration medical plan cannot be renewed or extended, except as provided in subsection (1)(a)(ii)(C) of this section; and

(c) A short-term limited duration medical plan cannot be issued if it would result in a person being covered by a short-term limited duration medical plan for more than three months in any twelve-month period.

NEW SECTION

**WAC 284-43-8010 Standard disclosure form for short-term limited duration medical plans.** (1) All carriers offering or issuing a short-term limited duration medical plan with an effective date on or after January 1, 2019, must issue a standard disclosure form for each short-term limited duration medical plan in the same format and with the same content as the disclosure form included in this section. The standard disclosure form must be displayed prominently in the medical plan contract and in any application materials provided in connection with enrollment in such coverage, and must be provided as a distinct, separate document to the person upon initial receipt of the medical plan application.

(2) Every carrier must have a mechanism in place to verify delivery of the standard disclosure form to the applicant and obtain the applicant's acknowledgment of receipt of the

form. The carrier must retain each acknowledged disclosure form for five years. The forms must be available for review by the commissioner upon request.

(3) The type size and font of the standard disclosure form must be easily read and be no smaller than fourteen point.

(4) The standard disclosure form must not be used until it has been filed with and approved by the commissioner.

(5) The standard disclosure form must include, at a minimum, the following information and must be presented in the following format:

(Carrier's name and address)  
**IMPORTANT INFORMATION  
 ABOUT THE LIMITS OF THE  
 COVERAGE  
 YOU ARE BEING OFFERED**

Save this document! It may be important to you in the future.

**CAUTION:**

**This plan may not cover pre-existing conditions, including any medical or mental health condition you've been treated for in the past.**

**It provides limited benefits and does *not* include benefits required by the Affordable Care Act.**

**It's temporary and may not cover your costs for most hospital or other medical services, or some essential health benefits.**

**Read carefully what the plan does and doesn't cover before you sign up.**

Before enrolling, check to see if you can buy a health plan through Washington State's Exchange, at [www.wahealthplanfinder.org](http://www.wahealthplanfinder.org) or 1-855-923-4633. If so, you may get help lowering your premium. Health plans sold through the Exchange provide more coverage and protections. If you missed the annual open enrollment period, see if you qualify for a special enrollment period here: [www.insurance.wa.gov/when-can-i-buy-individual-health-plan](http://www.insurance.wa.gov/when-can-i-buy-individual-health-plan)

This medical plan is not a Medicare supplement plan.

This medical plan is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your medical plan carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your medical plan might also have lifetime and/or annual dollar limits on health benefits.

This disclosure form is not a complete description of this medical plan. To understand what is and isn't covered, please read your plan. The plan will include information about your rights and the company's responsibilities.

**Short-Term Limited Duration Medical Plan Disclosure**

Below is a summary of the key benefits provided by this short-term limited duration medical plan:

**Type of coverage:** Short-term limited duration medical plan

**How long does coverage last?** (Provide the number of days or months of coverage)

**Does this policy cover pre-existing conditions?** ("Yes" or "No, it limits/excludes coverage for medical or behavioral health conditions for which medical advice, diagnosis, care or treatment was received by or recommended to you, including taking prescription medication, in the 24 months prior to the date you apply for coverage under the plan. See policy for details.")

**Who is NOT eligible for coverage?** (List all excluded categories, e.g. over a certain age, Medicare/Medicaid eligible, pregnant women, those with certain preexisting conditions, etc.)

**Can the policy be renewed?** No

**What benefits are covered and what is the financial responsibility of the member?** (For each benefit listed below, if not covered, list "Not covered". If covered, list applicable cost-sharing, including whether or not the deductible applies, the member's percentage of coinsurance, copayment, any quantitative treatment limitations and any cap on the amount the policy will pay for the service.

*Examples include: "Covered after deductible, \$45 copay plus 20% coinsurance, limited to only \$1,000 of coverage"; "Covered without deductible, \$50 copay, limited to 30 visits total or per year"; "Covered after deductible, limited to treatment of involuntary complications of pregnancy")*

- **Deductible:** \$ \_\_\_\_\_ (If there is more than one deductible, list each deductible with a description of the services to which it applies.)
- **Plan coinsurance (amount member must pay per service)** \_\_\_\_\_% (Must be expressed in terms of the percentage to be paid by the member. If coinsurance applies up to a maximum amount, provide that information here. Example: "This policy has a 50%

coinsurance up to \$10,000, after which benefits are paid at 100%." )

- **The maximum amount a member will pay out-of-pocket for cost-sharing for the term of the plan:** \$ \_\_\_\_\_ (If there is no out-of-pocket maximum, clearly state that there is no limit on the amount a member will have to pay for out-of-pocket cost-sharing. If there is an out of pocket maximum, clearly state which member payments are applied to this maximum, such as deductibles, copayments and coinsurance.)
- **The maximum dollar amount this plan will pay:** \$ \_\_\_\_\_ (Also include lifetime limit, if applicable. Example: "\$1 Million under this plan; lifetime limit of \$2 Million")
- **Emergency Room Services:**
- **Ambulance Services:**
- **Inpatient Hospital Services:**
- **Outpatient Hospital Services:**
- **Services at an Urgent Care Facility:**
- **Primary Care Visit to Treat an Injury or Illness:**
- **Specialist Visit:**
- **Physical therapy, speech therapy, occupational therapy:**
- **Mental Health Outpatient Services**
- **Mental Health Inpatient Services**
- **Substance Use Disorder Outpatient Services:**
- **Substance Use Disorder Inpatient Services;**
- **Imaging (CT/PET Scans, MRIs):**
- **Laboratory testing and services:**
- **Durable medical equipment:**
- **Preventive Care/Screening/Immunization:**
- **Prescription drugs:**
- **Skilled Nursing Facility:**
- **Services in an Ambulatory Surgical Center:**

**Does the policy exclude, eliminate, restrict, reduce, limit, or delay coverage for any benefits NOT listed above? ("No" or if "Yes", include details)**

**Does the policy require that the member use a specific network of health care providers or pharmacies? ("No" or if "Yes", include details)**

**Can a member be charged additional costs for covered services, in addition to their coinsurance or copays? (If members can be balance billed for any covered service, answer "Yes" and explain when this would occur. You must answer "Yes" for plan designs that do not use a provider network, or that use in-network facilities where not all services may be provided by in-network providers. If other situations apply, include any further explanation about when balance billing is possible.)**

If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage. This coverage is **not** considered comprehensive and would not qualify you for a special enrollment period.

Open enrollment for individual health plans begins November 1 each year for coverage that begins January 1 of the upcoming year.

You will need to complete and confirm all medical information you provide when applying for this plan. Your producer (also referred to as insurance agent) is not allowed to fill out any of this information for you.

**Consumer acknowledgment:**

I confirm that I have reviewed the content of this disclosure form and that I understand the limitations of this short-term limited-duration medical plan.

Consumer signature/name: \_\_\_\_\_

Date: \_\_\_\_\_

This notice has important information about this short-term limited duration medical plan. If you, or someone you're helping, has questions about this document or complaints about this medical plan and how it was sold to you, call the Washington State Office of the Insurance Commissioner at 1-800-562-6900. If you need help speaking to us in your preferred language, we will find an interpreter for you at no cost.

**NEW SECTION**

**WAC 284-43-8020 Commissioner's approval required.** (1) A short-term limited duration medical plan form, application form, or disclosure form must not be issued, delivered, or used unless it has been filed with and approved in writing by the commissioner.

(2) Rates, or modification of rates, for short-term limited duration medical plans must not be used until filed with and approved in writing by the commissioner.

(3) The commissioner may disapprove any forms or rates if the benefit provided therein is unreasonable in relation to the premium charged. The commissioner's order disapproving any form or rate shall state the grounds therefor.

(4) A form or rate must not knowingly be issued, delivered, or used if the commissioner's approval does not then exist.

(5) The commissioner may withdraw any approval at any time for cause. The commissioner's withdrawal of a previous approval shall state the grounds therefor.

**NEW SECTION**

**WAC 284-43-8030 Short-term limited duration medical plan cancellation and rescission.** (1) As used in this section:

(a) "Rescission" or "rescind" means the undoing or retroactive cancellation of a short-term limited duration medical plan. Rescission returns the carrier and member to the same positions as if the medical plan had never existed.

(b) "Cancellation" or "cancel" means termination of a short-term limited duration medical plan before the end of the coverage period under the plan.

(2) A short-term limited duration medical plan cannot be rescinded by the carrier during the coverage period except for a member's committing fraudulent acts as to the carrier or a

member's intentional nondisclosure regarding his or her coverage under a short-term limited duration medical plan during the twelve-month period prior to the date of application. If the plan is rescinded, the carrier must refund to the member all payments made by or on behalf of the member prior to the rescission date or the expiration date of the short-term limited duration medical plan.

(3) A short-term limited duration medical plan cannot be canceled by the carrier during the coverage period except for the following:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the carrier approved by the insurance commissioner;
- (c) A member's committing fraudulent acts as to the carrier;
- (d) A member's material breach of the medical plan; or
- (e) Change or implementation of federal or state laws that no longer permit the continued offering of the coverage.

(4) No oral or written misrepresentation or warranty made in the process of applying for a short-term limited duration medical plan, by the person applying for coverage or on his or her behalf, will be deemed material or allows the carrier to cancel or rescind the medical plan, unless the misrepresentation or warranty is made with actual intent to deceive.

(5) In any application for a short-term limited duration medical plan made in writing by a person or on his or her behalf, all statements in the application by the person applying for coverage or on his or her behalf are, in the absence of fraud, deemed representations and not warranties. The falsity of any statement shall not bar the right to recovery under the contract unless the false statement was made with actual intent to deceive.

(6) Nothing in this section shall be construed to provide the member with any benefits they would not otherwise be entitled to under their short-term limited duration medical plan.

(7) When cancellation is for nonpayment of premium, the carrier must notify the member in writing ten days prior to the cancellation date that his or her short-term limited duration medical plan will be canceled, unless payment is made prior to the cancellation date. When cancellation or rescission is for any other reason allowed under this section, the carrier must notify the member in writing twenty days prior to the cancellation or rescission date or the expiration date of the short-term limited duration medical plan, whichever occurs first. The notice must specifically state the reason(s) for the cancellation or rescission. The written communications required by this subsection must be phrased in simple language that is readily understood.

**WSR 18-17-168**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed August 21, 2018, 4:21 p.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, Sections 1.07 (Definitions) 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 27, 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: September 27, 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 September 26, 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 September 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 1.07** - The definition of "Toxic Air Contaminant or TAC" in the agency's current rule (Regulation I, Section 1.07(w)) is no longer consistent with the definition of this term in WAC 173-400-030(91) and references an obsolete section of the WAC. The proposed update will replace the outdated definition with the current WAC definition.

**Section 3.11** - The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. CPI for the Seattle/Tacoma/Bellevue area increased by 4.04 percent for the 2017 calendar year, which amounts to an increase of \$762.00 in the maximum civil penalty amount.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

**Section 3.25** - This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2017. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2018.

Reasons Supporting Proposal: 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:

Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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 statewide 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.

August 21, 2018  
Craig Kenworthy  
Executive Director

## AMENDATORY SECTION

### SECTION 1.07 DEFINITIONS

When used herein:

- (a) **AGENCY** means the Puget Sound Clean Air Agency.
- (b) **AIR CONTAMINANT** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.
- (c) **AIR POLLUTION** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.
- (d) **AMBIENT AIR** means the surrounding outside air.
- (e) **BOARD** means the Board of Directors of the Puget Sound Clean Air Agency.
- (f) **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.
- (g) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

(h) **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.

(i) **EMISSION** means a release of air contaminants into the ambient air.

(j) **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter 70.94 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or chapter 70.94 RCW.

(k) **EQUIPMENT** or **EMISSIONS UNIT** means any part of a stationary source or source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter 70.94 or 70.98 RCW.

(l) **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

(m) **GASOLINE** means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than 4 pounds per square inch absolute at 20°C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than 4 pounds per square inch absolute at 20°C shall be considered "gasoline" for purpose of this regulation.

(n) **GASOLINE STATION** means any site dispensing gasoline into motor vehicle, marine vessel, or aircraft fuel tanks from stationary storage tanks.

(o) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

(p) **MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

(q) **MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

(r) **OWNER** or **OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.

(s) **PERSON** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(t) **REASONABLY AVAILABLE CONTROL TECHNOLOGY** or **RACT** means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capi-

tal and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(u) **REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.

(v) **SOURCE** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same 2-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 supplement.

(w) **TOXIC AIR POLLUTANT (TAP) or "toxic air contaminant"** (~~(CONTAMINANT or TAC)~~) means any (~~(Class A or Class B)~~) toxic air pollutant listed in WAC 173-460-150 (~~(and 173-460-160)~~). The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 (~~(and/or 173-460-160)~~). The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(x) **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996.

(y) **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

(z) **VOLATILE ORGANIC COMPOUND or VOC** means an organic compound that participates in atmospheric photochemical reactions as defined in 40 CFR 51.100(s) in effect as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference.

## **AMENDATORY SECTION**

### **SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ~~\$(18,847.00))~~ 19,609.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than ~~\$(18,847.00))~~ 19,609.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during

regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

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

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

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

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

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

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

### **AMENDATORY SECTION**

#### **SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~(2017)~~) 2018.

### **WSR 18-17-169**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed August 21, 2018, 4:26 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-164.

Title of Rule and Other Identifying Information: WAC 246-339-025 Exemptions for blood establishment registration (blood establishments), the department of health (department) is proposing amending WAC 246-339-025 to align with statutory language in chapter 70.335 RCW.

Hearing Location(s): On October 2, 2018, at 2:00 p.m., at the Washington State Department of Health, Town Center 2, Conference Room 158, 111 Israel Road, S.E., Tumwater, WA 98502.

Date of Intended Adoption: October 8, 2018.

Submit Written Comments to: Susan Walker, Manager, Lab Quality Assurance, Medical Test Sites, Washington State Department of Health, 20425 72nd Avenue South, Suite 310, Kent, WA 98032, email <https://fortress.wa.gov/doh/policyreview>, fax 253-872-6803, by October 2, 2018.

Assistance for Persons with Disabilities: Contact Susan Walker, phone 253-395-6745, fax 253-395-6365, TTY 360-833-6388 or 711, email [susan.walker@doh.wa.gov](mailto:susan.walker@doh.wa.gov), by September 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amending WAC 246-339-025(1) to remove the term "and distributes" from current rule language in order to provide clarification as to which hospitals are exempt from the department's registration requirements under chapter 70.335 RCW. The proposed deletion of this term aligns with statutory language in RCW 70.335.020(1).

Reasons Supporting Proposal: The department reopened chapter 246-339 WAC, Blood establishments, in January 2018, in response to a petition that was received by the department in 2017, shortly after the new chapter was adopted on June 23, 2017, and filed as WSR 17-14-026. The petition requested the department revise the existing blood establishments rules to clarify whether hospitals are exempt from the registration requirements of the chapter. After careful consideration, the department is proposing the deletion of the term "and distributes" from WAC 246-339-025(1) to

align with statutory language in RCW 70.335.020(1). The proposed revision is intended to provide greater clarification to the public as to which hospitals licensed under chapter 70.41 or 71.12 RCW are exempt from the department's blood establishment registration requirements.

Statutory Authority for Adoption: RCW 43.70.040 and chapter 70.335 RCW.

Statute Being Implemented: Chapter 70.335 RCW.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Maura Craig, 111 Israel Road S.E., Tumwater, WA 98502, 360-236-4997; Implementation and Enforcement: Susan Walker, 20425 72nd Avenue South, Suite 310, Kent, WA 98032, 253-395-6745.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts 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.

Explanation of exemptions: The rule proposal provides clarifying language that is dictated by chapter 70.335 RCW and does not impose any costs on businesses.

August 21, 2018

John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 17-14-026, filed 6/23/17, effective 7/24/17)

**WAC 246-339-025 Exemptions for blood establishment registration.** A blood establishment is exempt from the requirements of this chapter if it meets one or more of the following:

(1) Hospitals licensed under chapter 70.41 or 71.12 RCW unless the hospital collects (~~(and distributes)~~) blood directly from donors for the purpose of allogeneic transfusions.

(2) Organizations that collect source plasma for the production of plasma derivatives by fractionation.

(3) Cases of individual patient medical need, as determined by a qualified health care provider, such as:

(a) An autologous or directed donation as defined in WAC 246-339-010; and

(b) An out-of-state blood establishment that supplies blood products for allogeneic transfusion based upon a request from a Washington state registered blood establish-

ment in order to meet individual patient need, as determined by a qualified health care provider.

**WSR 18-17-179**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed August 22, 2018, 9:43 a.m.]

Supplemental Notice to WSR 18-16-114 on August 1, 2018.

Title of Rule and Other Identifying Information: Amendments made to WAC 220-220-020 Recreational license, 220-220-200 Valid catch record card, 220-310-010 Description of catch record cards and required information, and 220-310-020 Catch record cards.

Hearing Location(s): On October 5, 2018, at 8:30 a.m., commission conference call. Contact commission executive secretary Tami Lininger at 360-902-2267 for more information about participating in the conference call.

Date of Intended Adoption: October 5, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW) Rules Coordinator, 43200, Mailstop 43153, Olympia, WA 98504, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, fax 360-902-2179, email Dolores.noyes@dfw.wa.gov, by October 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department seeks to make additional amendments to the rules that include a \$5 fee for catch record cards that was previously approved by the legislature in ESSB 6127 during the 2018 legislative session.

Reasons Supporting Proposal: The proposed changes to the current rules are necessary to make the rules consistent with request[ed] legislation passed in 2018 and recommendations made by the Pacific Fishery Management Council. The proposed modification to WAC 220-310-020 (6)(a) would facilitate online catch reporting for species in addition to Puget Sound crab, which already has this capability. This would be a more convenient catch reporting method for anglers and could help increase compliance with catch reporting requirements.

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 and Implementation: Michele Culver, 1111 Washington Street S.E., Olympia, WA, 360-902-2182; 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 does not affect hydraulics.

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.

August 21, 2018  
Scott Bird  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-220-020 Recreational license.** A recreational license is ~~((a license document or))~~ a valid internet or telephone ~~((authorization))~~ transaction number issued by the department ~~((The license document is invalid unless the personal identification information on the license has been completed and the licensee has signed the license except that a temporary fishing license is issued either as a license document requiring personal identification information or as a stamp, which is invalid unless the two consecutive days for which it is valid are entered, in permanent ink, on the stamp))~~ or a valid license.

With the exception of razor clam licenses and one-day charter boat or guide operator stamp licenses, to be valid, a license must be signed by the licensee, must contain the licensee's personal identification information, and, if a catch record card is required, must be accompanied by a valid catch record card.

To be valid, a razor clam license must be signed by the licensee.

When a catch record card is not required for use with a one-day charter boat or guide operator stamp license, the stamp license is valid only if the issue date is written in ink on the stamp and the stamp is signed by the licensee. When a catch record card is required for use with a one-day charter boat or guide operator stamp license, the license is valid only if the issue date is written in ink on the stamp, the stamp is affixed to the catch record card, the catch record card is signed by the licensee, and the catch record card contains the licensee's completed personal identification information.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-220-200 Valid catch record card.** For a catch record card ((shall be invalid unless)) to be valid:

(1) The angler ~~((has))~~ must have in physical possession the appropriate ~~((recreational))~~ license and catch record card for the area in which the angler is participating, if a license and/or a catch record card is required.

(2) The catch record card ~~((number is written in ink in the appropriate space on the back of the recreational license, if a license is required, and))~~ must contain the personal information ~~((has been entered on the catch record card as))~~ required under WAC ~~((220-310-020, or, if an automated~~

license is issued, the catch record card has attached to it a validation sticker containing the name and license number))  
220-310-010.

(3) The license issuance date ((is)) must be legible and not altered, and the license ((has not been)) must not be mutilated.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-310-010 Description of catch record cards and required information.** (1) The department shall prepare and distribute a catch record card for the following:

(a) Anadromous salmon (salmon);  
 (b) Dungeness crab taken from Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5-13;

(c) Halibut;  
 (d) Steelhead; and  
 (e) Sturgeon.

(2) Each catch record card shall contain space for the following information((, which must be recorded prior to the catch record card being separated from the underlying copy of the catch record card)):

(a) Name of fisher;  
 (b) Home address, or mailing address for a catch record card issued with a one-day charter boat or guide operator stamp license;

(c) City, state, and zip code;  
 (d) Date of issuance;  
 (e) ((Or, for automated licenses)) When the catch record card is issued with a one-day charter boat or guide operator stamp license, the catch record card shall contain space for ((the appropriate validation sticker)) that stamp.

(3) Each catch record card shall contain space for the following information:

(a) Month of catch;  
 (b) Day of catch;  
 (c) ((Catch record card area, river code, or stream: Location of catch;)) Location of catch by Marine Area, River, or Lake Code;

(d) A species code for salmon and sturgeon and a marked or unmarked space for salmon;

(e) A space for designating the type of vessel from which halibut was taken, either charter ("c") or ((personal/kicker (k boat)) private ("p"));

(f) A space for the length of sturgeon;  
 (g) For Dungeness crab;  
 (i) The type of crab fishery as described on the Dungeness crab catch record card;  
 (ii) The total crab retained by fishery type;  
 (iii) A tally mark for each crab retained.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-310-020 Catch record cards.** It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) An angler must obtain and have in his or her personal possession a valid and appropriate Puget Sound Dungeness

crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use any Dungeness crab in Catch Record Card Area 4 east of the Bonilla-Tatoosh Line, and in Catch Record Card Areas 5-13.

(2) An angler must obtain and have in his or her personal possession a valid and appropriate catch record card as described in WAC 220-310-010 to fish for or possess for personal use any anadromous salmon, sturgeon, halibut, or steelhead except a catch record card is not required for:

(a) Commercially caught salmon retained for personal use, as provided in WAC 220-354-030, and commercially caught sturgeon retained for personal use, as provided in WAC 220-353-110; and

(b) Landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 220-312-010 through 220-312-060.

(3) Unless the catch record card is issued by the automated licensing system, anglers must completely, accurately, and legibly complete all personal identification information in ink on the catch record card ((before detaching the card from its underlying copy or, for automated licenses, affixing the appropriate validation sticker to the catch record card to validate a catch record card)). A catch record card remains valid as long as there is one or more unfilled spaces available for the species being fished for, except:

(a) A catch record card remains valid for catch-and-release sturgeon fishing when the sturgeon portion of the card is full in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington.

(b) It is unlawful to use a second or subsequent catch record card to retain halibut, sturgeon, or wild steelhead after the first card is full.

(4) The fee for a catch record card for halibut is five dollars when purchased with an annual saltwater fishing license, an annual combination fishing license, or an annual fish Washington license. There is no charge for a catch record card for halibut with a temporary combination fishing license that is valid for one to three consecutive days, or with a one-day charter boat or guide operator stamp license, or with a youth license.

(5) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, anglers must enter, in ink, in the appropriate space on the card, the place, date of catch, and species (catch type). For sturgeon, anglers also must record the length of the fish; for halibut, anglers also must record the vessel type; and for salmon, anglers also must indicate whether or not the fish was marked by having a clipped adipose fin((s)).

((5)) (6) Immediately upon retaining a Puget Sound Dungeness crab aboard a vessel or on the shore, fishers must enter, in ink, in the appropriate space on the Puget Sound Dungeness crab catch record card, the place and date of catch, the fishery type, and a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher must enter the total number of crab tally marks for each fishery type.

((6)) (7)(a) Every person issued a catch record card must, by April 30 of the year after they used the card, return the card to the department of fish and wildlife or report the

card information at the designated internet site by dates indicated on the card. People issued a Puget Sound Dungeness crab catch record card must return the card to the Washington department of fish and wildlife or report the card information at the designated internet site by the dates indicated on the card.

(b) Failure to return a Dungeness crab catch record card or to report the Dungeness crab catch record card information at the designated internet site by the dates indicated on the card will result in a ten-dollar administrative fee. The administrative fee will be collected from anglers when they acquire a subsequent Puget Sound Dungeness crab endorsement.

~~((7))~~ (8) Any person possessing a catch record card must show the card to any law enforcement officer or authorized department employee who asks to inspect the card.

~~((8))~~ (9) A catch record card must not be transferred, borrowed, altered, or loaned to another person, except as authorized under RCW 77.32.565.

**WSR 18-17-184**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed August 22, 2018, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-092 on April 4, 2018.

Title of Rule and Other Identifying Information: New WAC 314-55-109 Cannabinoid additives—Requirements, restrictions, and quality assurance testing.

Hearing Location(s): On October 3, 2018, at 10:00 a.m., at the Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after October 17, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by October 3, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by September 28, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to cannabis rules in chapter 314-55 WAC as a result of legislation passed during the 2017 legislative session, as well as a number of clarifying, technical, and other needed changes identified by stakeholders and WSLCB staff.

Reasons Supporting Proposal: Rule making is necessary to ensure rules are consistent with changes to laws made by the legislature during the 2017 legislative session in ESSB 5131, SB 5130, and HB 1250. Other technical, clarifying, and needed changes to rules identified by staff and stakeholders are addressed, incorporating the CR-101 filed as WSR 16-15-035 into this rule making. Other changes to cannabis rules

needed as a result of changes to laws made in the 2017 legislative session (retail license forfeitures) is underway under a separate CR-102, and changes to advertising rules due to 2017 legislative changes to RCW 69.50.369 have already been completed under a separate rule making.

Statutory Authority for Adoption: ESSHB [E2SHB] 2334 (SL 2018 c. 132), RCW 69.50.342 and 69.50.345.

Statute Being Implemented: ESSHB [E2SHB] 2334 (SL 2018 c. 132), RCW 69.50.342 and 69.50.345.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; Implementation and Enforcement: Chief Justin Nordhorn, 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. A cost-benefit analysis was not required under RCW 34.05.325 [34.05.328] because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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; rule content is explicitly and specifically dictated by statute; rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; 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.

Explanation of exemptions: This rule proposal incorporates changes needed as a result of 2018 cannabis legislation. These proposed rules were directed to be created by the legislature through statute changes or requested by the regulated industry. Changes to fees are set by statute and all other costs for compliance of any changes to recordkeeping, reporting, and other compliance requirements were determined to be minimal, similar to current requirements for cannabis already in place, and do not disproportionately impact small businesses. Further, these changes are needed to ensure proper regulation of a controlled substance under state and federal law and costs have been mitigated or reduced as much as possible under the circumstances.

August 22, 2018

Jane Rushford  
Chair

NEW SECTION

**WAC 314-55-109 Cannabinoid additives—Requirements, restrictions, and quality assurance testing.** (1) As provided in RCW 69.50.326 Licensed marijuana producers and licensed marijuana processors may use a cannabidiol (CBD) product obtained from a source not licensed under this chapter, provided the CBD product:

(a) Has a THC level of 0.3 percent or less; and

(b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter and in accordance with testing standards established in this section.

(2) Licensed marijuana producers and licensed marijuana processors may use a CBD product obtained from a source not licensed under this chapter and chapter 69.50 RCW as an additive for the purpose of enhancing the CBD concentration of any product authorized for production, processing, and sale under this chapter. However, useable marijuana, except marijuana that is an intermediate product that will be converted into a marijuana-infused product or a marijuana concentrate, may not be treated or otherwise adulterated in any way including the addition of a CBD product consistent with the rules of this chapter. Except as allowed under this section, CBD product additives must be lawfully produced by, or purchased from, a producer or processor licensed under this chapter. The testing requirements for CBD products derived from marijuana produced by marijuana licensees are provided in WAC 314-55-102. The testing requirements in this section are required in addition to quality assurance testing otherwise required under this chapter for marijuana products.

(3) **Traceability requirements.** A licensee must enter CBD products obtained from a source not licensed under this chapter into the state traceability system and keep the information in the traceability system completely up to date, consistent with marijuana and marijuana product recordkeeping and traceability requirements in WAC 314-55-083. A licensee must keep CBD products obtained from a source not licensed under this chapter labeled and quarantined in an area separate from marijuana and marijuana products under video surveillance consistent with the requirements for controlled areas in WAC 314-55-083(3) until the CBD products successfully pass quality assurance testing or are destroyed due to failure of tests as provided in this section. At no time during the quarantine period can the product be handled or moved under any circumstances, except for purposes of deducting samples as required under this section, and is subject to auditing by the WSLCB or its designee(s). CBD products obtained from a source not licensed under this chapter that fail quality assurance testing as provided in this section must not be added to any marijuana product and must be disposed of consistent with WAC 314-55-097 and the disposal logged into the traceability system consistent with WAC 314-55-083.

(4) **Testing requirements.** The following sample deduction and testing requirements apply to CBD products obtained from a source not licensed under this chapter. Such products must successfully pass quality assurance testing prior to being added to any marijuana product. Samples that fail quality assurance testing and the corresponding products

that the samples were deducted from must be disposed of consistent with WAC 314-55-097.

(a) **Sample size and deduction requirements.** Licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section. Samples must be deducted in a way that is most representative of the product the sample is deducted from. The minimum sample size for the testing requirements under this section for CBD products is one percent of the product as packaged by the manufacturer of the CBD product but in no case shall the sample be less than two grams. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample before the sample is tested.

(i) All samples must be collected/deducted in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(ii) Persons collecting samples must wash their hands prior to collecting a sample, wear appropriate gloves, and must use sanitary utensils and storage devices when collecting samples.

(iii) Samples must be placed in a sanitary plastic or glass container and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.

(iv) The licensee must maintain the CBD products from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the products from becoming contaminated or degraded prior to the CBD products being added or incorporated into marijuana products after successful passage of testing requirements.

(v) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:

(A) The unique identifier for the product generated by the state traceability system;

(B) The name of the certified lab receiving the sample;

(C) The license number and business or trade name of the licensee sending the sample;

(D) The date the sample was collected; and

(E) The weight of the sample.

(vi) Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the sample(s) directly to the lab. Certified labs may also return any unused portion of the sample(s).

(b) **Required fields of testing.**

(i) **Potency testing.** Potency testing is required to confirm the product is less than 0.3 percent THC, contains detectable levels of CBD, and to determine the levels of THC, THC-A, CBD, and CBD-A in the product. Synthetic cannabinoids as defined in RCW 69.50.204 are prohibited under RCW 69.50.401 and any test result that suggests the presence of a synthetic cannabinoid must be immediately reported to the WSLCB.

(A) Certified labs must test and report the following cannabinoids to the WSLCB in the state traceability system when testing for potency:

- (I) THCA;
- (II) THC;
- (III) Total THC;
- (IV) CBDA;
- (V) CBD; and
- (VI) Total CBD.

(B) Calculating total THC and total CBD.

(I) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(II) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(C) Regardless of analytical equipment or methodology used for testing, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(D) The following potency results fail quality assurance testing for the purposes of this section and the sample and corresponding product from which the sample was deducted must be disposed of consistent with this section and WAC 314-55-097:

(I) The CBD product tests above 0.3 percent THC;

(II) The CBD product does not contain any detectable amounts of CBD or CBD-A; and

(III) The sample test results indicate that a substance is present that is not THC, CBD, or inert substance which the THC or CBD is dissolved into.

(ii) **Pesticide screening.**

(A) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department of health in consultation with the Washington state department of agriculture and the WSLCB.

(B) If the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed for use or application on marijuana under this chapter and is above the action levels provided in WAC 314-55-108, that sample and corresponding product from which the sample was deducted has failed quality assurance testing. A sample that tests at or above the action levels for pesticides consistent with WAC 314-55-108 fails pesticide testing requirements for the purposes of this section. A sample and corresponding product from which the sample was deducted that fails quality assurance testing under this section must be destroyed consistent with WAC 314-55-097.

(C) Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of CBD products obtained from a source not licensed under this chapter. Certified third-party labs may also screen for additional pesticides not specifically required under this section and per the DOH list, however, any sample that tests at or above the action level for any pesticide(s) as established in WAC 314-55-108 fails the testing requirements under this section and must be disposed of consistent with WAC 314-55-097.

(iii) **Heavy metal screening.** For the purposes of heavy metal screening, a sample fails quality assurance testing and

must be disposed of consistent with WAC 314-55-097 if it meets or exceeds the following limits:

| Metal                       | Limit, µg/daily dose (5 grams) |
|-----------------------------|--------------------------------|
| Inorganic arsenic . . . . . | 10.0                           |
| Cadmium . . . . .           | 4.1                            |
| Lead . . . . .              | 6.0                            |
| Mercury . . . . .           | 2.0                            |

(iv) **Residual solvents screening.** Certified labs must test for the solvents listed in the table below at a minimum. Except as otherwise provided in this subsection, a sample and corresponding product from which the sample was deducted fail quality assurance testing for residual solvents and must be disposed of consistent with WAC 314-55-097 if the results meet or exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing.

| Solvent                  | ppm   |
|--------------------------|-------|
| Acetone                  | 5,000 |
| Benzene                  | 2     |
| Butanes                  | 5,000 |
| Cyclohexane              | 3,880 |
| Chloroform               | 2     |
| Dichloromethane          | 600   |
| Ethyl acetate            | 5,000 |
| Heptanes                 | 5,000 |
| Hexanes                  | 290   |
| Isopropanol (2-propanol) | 5,000 |
| Methanol                 | 3,000 |
| Pentanes                 | 5,000 |
| Propane                  | 5,000 |
| Toluene                  | 890   |
| Xylene*                  | 2,170 |

\* Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(v) **Microbiological screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for microbiological screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

|   | <b>Enterobacteria (bile-tolerant gram-negative bacteria)</b> | <b><i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i></b> |
|---|--|---|
| <b>Unprocessed Plant Material</b>               | 10 <sup>4</sup>  | Not detected in 1g  |
| <b>Extracted or Processed Botanical Product</b> | 10 <sup>3</sup>  | Not detected in 1g  |

(vi) **Mycotoxin screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for mycotoxin screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

(A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and

(B) Ochratoxin A: 20 µg/kg of substance.

(5) **Test results reporting requirements.** Certified labs must report all test results as required by this section into the state traceability system within twenty-four hours of completion of the tests.

(6) **Retesting.** At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest. Potency retesting will generally not be authorized.

(7) **Remediation.** Producers and processors may remediate failed products so long as the remediation method does not impart any toxic or deleterious substance to the CBD products obtained from a source outside the regulated system. Remediation solvents or methods used on the product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying marijuana products derived from the remediated product; or consumer upon request. The product(s) the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated CBD products obtained from a source outside the regulated system may be sold, transported, or used in the processing of marijuana products until the completion and successful passage of quality assurance testing as required in this section.

(8) A licensee or certified lab that violates any of the provisions of this section is subject to disciplinary action, including possible summary suspension or revocation of the producer license, processor license, producer/processor license, or lab certification.

**WSR 18-17-185  
PROPOSED RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed August 22, 2018, 10:56 a.m.]

Supplemental Notice to WSR 18-09-118.

Preproposal statement of inquiry was filed as WSR 17-15-121 on July 19, 2017, and WSR 16-15-035 on July 13, 2016.

Title of Rule and Other Identifying Information: WAC 314-55-010 Definitions, 314-55-015 General information about marijuana licenses, 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc., 314-55-020 Marijuana license qualifications and application process, 314-55-035 Persons or entities that must qualify for a marijuana license, 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license, 314-55-073 Marijuana research license, 314-55-075 Marijuana producer license—Privileges, requirements, and fees, 314-55-077 Marijuana processor license—Privileges, requirements, and fees, 314-55-079 Marijuana retailer license—Privileges, requirements, and fees, 314-55-080 Medical marijuana endorsement, 314-55-082 Insurance requirements, 314-55-083 Security and traceability requirements for marijuana licensees, 314-55-084 Marijuana plant production, 314-55-087 What are the recordkeeping requirements for marijuana licensees?, 314-55-089 Tax and reporting requirements for marijuana licensees, 314-55-092 Failure to pay excise taxes and late payment of excise taxes, 314-55-095 Marijuana servings and transaction limitations, 314-55-096 Vendor, educational, and internal quality control samples, 314-55-097 Marijuana waste disposal—Liquids and solids, 314-55-104 Marijuana processor license extraction requirements, 314-55-117 Use of payment services by retailers (new section), 314-55-120 Ownership changes, 314-55-125 Change of location, 314-55-137, Receiverships (new section), 314-55-140 Death or incapacity of a marijuana licensee, 314-55-155, Advertising, 314-55-185 WSLCB right to inspect premises or vehicles associated with a license to produce, process, sell, research, or transport marijuana, 314-55-310, Transportation license, 314-55-410 Cooperatives, 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers (new section), 314-55-525 Group 2 regulatory violations, 314-55-530 Group 3 license violations, and 314-55-081 Who can apply for a marijuana retailer license? (repealer).

Hearing Location(s): On October 3, 2018, at 10:00 a.m., at the Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after October 17, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by October 3, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by September 28, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to cannabis rules in chapter 314-55 WAC as a result of legislation passed during the 2017 legislative session, as well as a num-

ber of clarifying, technical, and other needed changes identified by stakeholders and WSLCB.

Reasons Supporting Proposal: Rule making is necessary to ensure rules are consistent with changes to laws made by the legislature during the 2017 legislative session in ESSB 5131, SB 5130, and HB 1250. Other technical, clarifying, and needed changes to rules identified by staff and stakeholders are addressed, incorporating the CR-101 filed as WSR 16-15-035 into this rule making. Other changes to cannabis rules needed as a result of changes to laws made in the 2017 legislative session (retail license forfeitures) is [are] underway under a separate CR-102, and changes to advertising rules due to 2017 legislative changes to RCW 69.50.369 have already been completed under a separate rule making. This supplemental CR-102 filing makes additional changes to proposed rule adjustments included in the original CR-102 (filed as WSR 18-09-118 on April 18, 2018) based on comments received, a rules petition, and additional changes needed as identified by WSLCB.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369.

Statute Being Implemented: RCW 69.50.325, 69.50.331, 69.50.357, 69.50.369, 69.50.395, and 69.50.372.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; Implementation: Rebecca Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Chief Justin Nordhorn, 30000 [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. A cost-benefit analysis was not required under RCW 34.05.325 [34.05.328] because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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; rule content is explicitly and specifically dictated by statute; rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; 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.

Explanation of exemptions: This rule proposal incorporates changes needed as a result of 2017 cannabis legislation. Other clarifying, technical, and recommended changes from

stakeholders and WSLCB staff are also included. Many changes were specifically directed by statute changes or requested by the regulated industry. Changes to fees are set by statute and all other costs for compliance of any changes to recordkeeping, reporting, and other compliance requirements were determined to be minimal and do not disproportionately impact small businesses. Further, these changes are needed to ensure proper regulation of a controlled substance under state and federal law and costs have been mitigated or reduced as much as possible under the circumstances.

August 22, 2018  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-010 Definitions.** The following ((are)) definitions apply for the purpose of this chapter((-Other)) in addition to the definitions ((are)) provided in RCW 69.50-101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

(6) "Cooperative" means a group of more than one, but no more than four qualified medical marijuana patients and/or designated providers who share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative.

(7) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(8) "Elementary school" means a school with a physical location for early education that provides the first four to

eight years of basic education and recognized by the Washington state superintendent of public instruction.

(9) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

(10) "End product" means a marijuana product that requires no further processing prior to retail sale.

(11) "Financier" means any person or entity, other than a banking institution, ~~((that has made or will make an investment in the licensed business. A financier can be a person or entity))~~ that provides money as a gift~~(;)~~ or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest~~(; or expects any percentage of the profits from the business in exchange for a loan or expertise))~~.

~~((11))~~ (12) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

~~((12))~~ (13) "Harvest" means the marijuana plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

(14) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(15) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana mix lot, marijuana concentrate or marijuana-infused product that must be or are intended to be converted further ~~((processed prior to retail sale))~~ to an end product.

~~((13))~~ (16) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((14))~~ (17) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting marijuana, ~~((usable))~~ useable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises.

~~((15))~~ (18) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

~~((16))~~ (19) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

~~((17))~~ (20) "Lozenge" means a marijuana-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

(21) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combina-

tions of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((18))~~ (22) "Marijuana mix" means an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm.

(23) "Marijuana mix infused" or "mix infused" means an end product that contains marijuana mix and may contain other intermediate products or useable marijuana.

(24) "Marijuana mix packaged" or "mix packaged" means an end product containing only marijuana mix and no other product types.

(25) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((19))~~ (26) "Paraphernalia" means items used for the storage or use of ~~((usable))~~ useable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongos, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((20))~~ (27) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((21))~~ (28) "Perimeter" means a property line that encloses an area.

~~((22))~~ (29) "Plant" means a marijuana plant.

~~((23))~~ (30) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((24))~~ (31) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, ~~((or))~~ federal government, or metropolitan park district.

~~((25))~~ (32) "Product(s) otherwise taken into the body" means a marijuana-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

(33) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((26))~~ (34) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((27))~~ (35) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable non-profit organization, city, county, state, ~~((or))~~ federal government, or metropolitan park district.

~~((28))~~ (36) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((29))~~ (37) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((30))~~ (38) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, ~~((usable))~~ useable marijuana, ~~((and))~~ or marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((31))~~ (39) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

~~((32))~~ (40) "WSLCB" means the Washington state liquor and cannabis board.

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-015 General information about marijuana licenses.** (1) A person or entity must meet certain qualifications under this chapter to receive a marijuana license, which are continuing qualifications ~~((in order))~~ required to maintain the license.

(2) All applicants, licensees, and employees working in each licensed establishment must be at least twenty-one years of age. No one under twenty-one years of age is allowed to enter or remain on a marijuana licensed premises except as provided in RCW 69.50.357.

(3) Minors restricted signs must be posted at all marijuana licensed premises consistent with the requirements in WAC 314-55-086.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the WSLCB approves the license application.

(5) The WSLCB will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The WSLCB will not approve any marijuana license for a location on federal lands.

(7) The WSLCB will not approve any marijuana license within the exterior boundaries of the reservation of a federally recognized tribe without the express written consent of the tribe. If a tribe receives written notice from the WSLCB of a license application or change request under RCW 69.50.331 and the tribe does not respond to the WSLCB within thirty days of the date of that notice, the WSLCB will assume the tribe does not consent to the location of the applicant or licensee and the applicant or licensee must find a different location.

(8) The WSLCB will not approve any marijuana retailer license for a location within another business with the exception of the research license consistent with WAC 314-55-073. More than one license ~~((could))~~ may be located in the same building if each licensee has their own area separated by full walls with their own entrance, or if the same business entity holds a producer license and a processor license at the same location under a single license number. Product may not be commingled.

~~((8))~~ (9) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the WSLCB in a conspicuous place on the premises.

~~((9))~~ (10) In approving a marijuana license, the WSLCB reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

~~((10))~~ (11) A marijuana producer, processor or retailer licensed by the WSLCB must conduct the production, processing, storage, and sale of marijuana-infused products using sanitary practices.

~~((11))~~ A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(12) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on or within the licensed premises.

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc.** (1) No industry member or ~~((marijuana retailer))~~ licensee shall enter into any agreement which

causes undue influence over another (~~(retailer)~~) licensee or industry member. This rule shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of marijuana that are made in accordance with usual and common business practice and that are otherwise in compliance with (~~(the rules)~~) chapter 69.50 RCW and this chapter.

(2) No marijuana producer or processor shall advance and no marijuana licensee shall receive money or moneys' worth under an agreement written or unwritten or by means of any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;

(f) Free product of any kind except as allowed by WAC (~~(314-55-083)~~) 314-55-096 and RCW 69.50.585; or

(g) Treats or services of any nature whatsoever except such services as are authorized in this (~~(rule)~~) section and under RCW 69.50.585.

(3) "Industry member" means a licensed marijuana producer, marijuana processor, marijuana retailer, marijuana transportation licensee, marijuana research licensee, their authorized representatives, and including, but not limited to, any affiliates, subsidiaries, officers, partners, financiers, agents, employees, and representatives of any (~~(industry member)~~) licensee.

(4) Consistent with WAC 314-55-017, no industry member or employee thereof shall sell to any marijuana licensee or solicit from any such licensee any order for any marijuana tied in with, or contingent upon, the licensee's purchase of some other marijuana, or any other merchandise, paraphernalia, property, or service.

(5) If the WSLCB finds in any instance that any licensee has violated this (~~(regulation)~~) section, then all licensees involved in the violation shall be held equally responsible (~~(for such violation)~~).

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests.** Each marijuana license application is unique and investigated individually. The WSLCB may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not (~~(necessarily)~~) limited to, the following:

(1) (~~(Per)~~) Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, (~~(and may send a notice to)~~) tribal governments (~~(or)~~), and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(2) Consistent with RCW 69.50.331 (8)(e), the WSLCB shall send a notice to tribal governments when an applicant or

licensee is proposed to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government will have twenty days to respond with an approval to the application. If written approval is not received within thirty days, the WSLCB will assume the tribe does not consent to the applicant's location and the applicant must find a new location.

(3) Applicants for a new marijuana producer, processor, (~~(or)~~) retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB; and

(e) The notice must be posted for fourteen consecutive days.

~~((3))~~ The WSLCB will use a priority system to determine the order that marijuana retailers are licensed:

(a) **First priority is given to applicants who:**

(i) ~~Applied to the state liquor and cannabis board for a marijuana retail license prior to July 1, 2014. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service showing the applicant applied for a retail marijuana license prior to July 1, 2014;~~

(ii) ~~Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB with a copy of the master business from department of revenue business licensing service showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;~~

(iii) ~~Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service and copies of municipal business licenses from January 1, 2013, through the date of application; and~~

(iv) ~~Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue, department of labor and industries, and the employment security department that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid~~

all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013.

**(b) ~~Second priority is given to applicants who:~~**

~~(i) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;~~

~~(ii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service and copies of municipal business licenses from January 1, 2013, through the date of application; and~~

~~(iii) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue, the department of labor and industries, and the employment security department that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013, for all businesses they are engaged in since January 1, 2013.~~

**(e) ~~Third priority is given to all other applicants who do not meet the qualifications and experience identified for priority one or two.~~**

(4) All marijuana (~~retail~~) license applicants must meet the qualifications required by the WSLCB before they will be granted a license (~~regardless of priority~~).

(5) The WSLCB will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(6) The WSLCB will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

son to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check.

(7) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(8) The WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(9) The WSLCB may conduct ~~((a final))~~ an inspection of the proposed or currently licensed business location, ~~((in order))~~ to determine if the applicant has complied with all the requirements of the license or change to the license or premises requested.

(10) ~~((Per))~~ Under RCW 69.50.331 (1)(c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

~~((Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the WSLCB. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).~~

~~((2))~~ (a) As part of the application process, each applicant must submit ~~((in a format supplied by the WSLCB))~~ an operating plan ~~((detailing the following as it pertains))~~ outlining required elements for the location as provided in this chapter pertaining to the license type being sought. The operating plan must be submitted using an operating plan format supplied by the WSLCB. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. ~~((The operating plan must include the following information:~~

| <b>Producer</b>   | <b>Processor</b>                     | <b>Retailer</b>                      |
|---|--------------------------------------|--------------------------------------|
| Security  | Security                             | Security                             |
| Traceability  | Traceability                         | Traceability                         |
| Employee qualifications and training  | Employee qualifications and training | Employee qualifications and training |
| Transportation of product including packaging of product for transportation | Transportation of product            | Transportation of product            |
| Destruction of waste product  | Destruction of waste product         | Destruction of waste product         |

| Producer   | Processor   | Retailer  |
|--|---|---|
| Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process | Description of the types of products to be processed at this location together with a complete description of all equipment to include all marijuana-infused edible processing facility equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products |   |
| Testing procedures and protocols   | Testing procedures and protocols  |   |
| Employee compensation and benefits data (see subsection (13) of this section)  | Employee compensation and benefits data (see subsection (13) of this section)   | Employee compensation and benefits data (see subsection (13) of this section)                 |
|  | Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products  |   |
|  | Description of packaging and labeling of products to be processed   |   |
|  |   | What array of products are to be sold and how are the products to be displayed to consumers)) |

(b) After obtaining a license, the license holder must notify the WSLCB in advance of any change in their operating plan. Prior approval is required before the change ~~((is))~~ may be implemented.

(12) The WSLCB may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The WSLCB may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of chapter 314-55 WAC. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

(i) Application for additional funding;

(ii) Application for added medical marijuana endorsement;

(iii) Assumption of a license;

(iv) Change in governing people, percentage owned, or stock/unit ownership;

(v) Change of location;

(vi) Expanding plant canopy to maximum allotted;

(vii) Request to alter marijuana site or operating plan;

(viii) Request to add a processor license; and

(ix) Splitting a producer and processor license.

(13)(a) ~~((In order))~~ To aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all applicants and licensees seeking renewal provide the following information:

**(b) Employees compensation and benefits data.**

(i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?

(ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?

(iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?

(iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?

(v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

(14) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(15) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(16) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-035 ~~((What))~~ ~~((or))~~ ~~and~~ ~~entities~~ ~~((have to))~~ ~~that must~~ ~~qualify~~ ~~for a marijuana license~~ ~~((?))~~ ~~—True parties of interest, financiers, consultants, and~~

**contractual agreements.** A marijuana license must be issued in the name(s) of ~~(the)~~ all true party(ies) of interest for the license.

(1) **True parties of interest**~~((--))~~. For purposes of this title, "true party of interest" means a person or business entity that holds an ownership interest in the marijuana license, has management or control of marijuana business activities as defined in this section under the license, or receives a share of the net profits of the marijuana business. The following true parties of interest must be qualified to be listed on the license, including residency requirements:

| True party of interest   | Persons to be qualified  |
|--|--|
| Sole proprietorship  | Sole proprietor and spouse.  |
| General partnership  | All partners and spouses.  |
| Limited partnership, limited liability partnership, or limited liability limited partnership   | <ul style="list-style-type: none"> <li>All general partners and their spouses.</li> <li>All limited partners and spouses.</li> </ul>   |
| Limited liability company  | <ul style="list-style-type: none"> <li>All members and their spouses.</li> <li>All managers and their spouses.</li> </ul>  |
| Privately held corporation   | <ul style="list-style-type: none"> <li>All corporate officers (or persons with equivalent title) and their spouses.</li> <li>All stockholders and their spouses.</li> </ul>                    |
| Publicly held corporation  | <p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>   |
| Multilevel ownership structures  | All persons and entities that make up the ownership structure (and their spouses).   |
| Any entity or person <del>((inclusive of financiers that are))</del> expecting a percentage of the profits in exchange for a monetary loan or expertise. | Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. |
| <u>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</u>   | Any entity or person who exercises control over the licensed business in exchange for money or expertise.  |
| Financial institutions are not considered true parties of interest.  | For the purposes of this chapter:  |

| True party of interest | Persons to be qualified   |
|------------------------|---|
|                        | <ul style="list-style-type: none"> <li>"Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>"Net profit" means gross sales minus cost of goods sold.</li> </ul> |
| Nonprofit corporations | All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.  |

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) An employee of a licensee receiving commission-based compensation consistent with this subsection.

(i) Commission-based compensation based on an individual employee's product sales performance is permissible for employees of producers and processors only and will not make the employee receiving commission-based compensation a true party of interest so long as the commission-based compensation arrangement does not create a default true party of interest relationship.

(ii) Commission-based compensation arrangements between a licensee and its employee must be in writing.

(iii) No more than five percent of the gross profits of the business may be given to any one employee under a commission-based compensation arrangement.

(iv) An employee of a licensee that operates under a commission-based compensation arrangement must be listed as an employee of the licensee with the Washington state employment security department.

(d) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(e) A consultant receiving flat or hourly rate compensation under a written contractual agreement so long as the consultant does not receive any percentage of profits or interest in the licensed business or management or control of the licensed business such that would indicate or create a true party of interest relationship.

(3) **Financiers**~~((--))~~. A financier is a person or entity other than a financial institution that supplies capital or financial support to a marijuana licensee. Such financial relation-

ships are limited to loans with reasonable interest or gifts of funds.

(a) A financier may not receive an ownership interest, control of the business, or a profit-sharing interest or percentage of the profits in exchange for financial support unless the financier is a true party of interest with prior WSLCB approval and is qualified on the license as such.

(b) Washington state residency requirements do not apply to financiers who are not also a true party of interest, but all financiers must be United States residents.

(c) The WSLCB will conduct a financial investigation as well as a criminal background of financiers and all funds must be approved by the WSLCB prior to transfer to the marijuana licensee.

**(4) Persons who exercise control of business((-)),**

(a) The WSLCB ((with)) may conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include ((both)) a financial investigation ((and/or)), a criminal history background, or both.

(b) Management of daily business operations will not generally be considered as constituting a true party of interest unless the surrounding circumstances or cumulative duties or powers indicate that the person is exercising management or control of the business to such an extent so as to constitute a true party of interest role. Examples of management or control of a licensed business that would constitute a true party of interest include, but are not limited to, the following:

(i) Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

(ii) Any person or legal entity, other than an employee acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business; or

(iii) Any person or legal entity, other than the employee acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business.

(5) After licensure, ((a true party of interest, including financiers, must)) licensees must:

(a) Continue to disclose the source of funds for all monies invested in the licensed business. The WSLCB must approve ((these)) all funds prior to investing them into the business; and

(b) Notify the WSLCB and receive WSLCB approval of any changes in ownership prior to the changes being made as provided in WAC 314-55-120.

(c) Failure to follow the requirements of this subsection is a violation of this section.

(6) A person or entity who is entitled to receive a percentage of the profits or exercises control over the licensed business under an agreement or contract with a licensee may be named on the license as a true party of interest. Examples of circumstances where a person or entity may be qualified as a true party of interest include, but are not limited to, lease, operating plan, consulting, or management agreements.

**(7) Licensing agreements and consulting contracts.**

(a) A licensed marijuana business may enter into a licensing agreement, or consulting contract, with any individ-

ual, partnership, employee cooperative, association, non-profit corporation, or corporation, for:

(i) Any goods or services that are registered as a trademark under federal law or under chapter 19.77 RCW;

(ii) Any unregistered trademark, trade name, or trade dress; or

(iii) Any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to a marijuana business.

(b) All agreements or contracts entered into by a licensed marijuana business, as authorized under this section, must be disclosed to the WSLCB. All agreements or contracts must be sent to the WSLCB via email to [licensingcontracts@lcb.wa.gov](mailto:licensingcontracts@lcb.wa.gov) for review prior to the parties signing the agreement or contract. Once the contract has been reviewed by the WSLCB, the licensee will receive a reply regarding whether the agreement or contract is acceptable under chapter 69.50 RCW and the rules in this chapter.

(c) Agreements or contracts under this subsection cannot create a true party of interest relationship unless the licensee also receives approval that the person or entity be qualified as a true party of interest and be listed on the license consistent with the requirements of this section.

(d) Agreements or contracts under this subsection cannot create an expectation of exclusivity or dictate the circumstances under which the marijuana business should be operated.

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license.** Following is a list of reasons the WSLCB may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the WSLCB has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana ((producer, processor, or retail)) license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the WSLCB during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the WSLCB to be gained in a manner which is in violation by law.

(7) Denies the WSLCB or its authorized representative access to any place where a licensed activity takes place or

fails to produce any book, record or document required by law or WSLCB rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (10).

(10) Except as provided in subsection (11) of this section, the WSLCB shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;
- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11)(a) A city or county may by local ordinance permit the licensing of marijuana businesses within one thousand feet but not less than one hundred feet of the facilities listed in subsection (10) of this section except elementary and secondary schools, and playgrounds.

(b) If a licensee applies for a marijuana license at a location less than one thousand feet of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the licensee must provide the WSLCB with a copy of the local ordinance that describes the distance required by the city or county the facility will be located.

(12) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(13) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(14) Has been denied a liquor or marijuana license or had a liquor license or marijuana license suspended or revoked in this or any other state.

(15) The operating plan does not demonstrate, to the satisfaction of the WSLCB, the applicant is qualified for a license.

(16) Failure to operate in accordance with the WSLCB approved operating plan.

(17) The WSLCB determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

**AMENDATORY SECTION** (Amending WSR 17-04-038, filed 1/25/17, effective 2/25/17)

**WAC 314-55-073 Marijuana research license.** A marijuana research license allows a holder of the license to pro-

duce, process, and possess marijuana for the limited research purposes provided in RCW 69.50.372. The WSLCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the requirements for marijuana research licensees provided in RCW 69.50.372.

**(1) Eligibility and continuing requirements for research license applications, prohibitions and restrictions.**

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a marijuana research license.

(b) Other marijuana licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the marijuana business, except:

(i) Licensed producers with a research license and approved research project may grow marijuana plants or possess marijuana for research purposes at the producer's licensed premises. However, all marijuana grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to marijuana grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess marijuana for research purposes at the processors licensed premises. However, all marijuana possessed for research purposes must be kept wholly separated and distinct from all marijuana possessed for commercial purposes or purposes other than those related to the research project and must not be comingled with or diverted to marijuana possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow marijuana plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on marijuana and marijuana products by the WSLCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all marijuana possessed for research purposes is wholly separated from and is not comingled with marijuana possessed for state required testing purposes for licensed producers or processors or marijuana possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be twenty-one years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) Except as otherwise provided by chapter 69.50 RCW and agency rule, no applicant for a research license may possess any marijuana plants or marijuana for research purposes

unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the WSLCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the WSLCB in writing.

**(2) Initial applications.**

**(a) Application made with business licensing services (BLS).**

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within thirty days of the date of the application letter from the WSLCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the WSLCB will not be considered by the reviewer and the WSLCB will withdraw the application after receiving notice in writing from the reviewer.

**(b) Additional application materials requirements.**

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, marijuana research license application form, and signature page form created by the WSLCB and available at the WSLCB's web site at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(B) A research plan limited to ~~((four))~~ eight pages, not including references or citations, that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of marijuana to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work. The scientific reviewer may request additional information or ask clarifying questions about the cost of the proposal to determine whether the budget meets the scope and design of the proposed project;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(C) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is twenty-one years of age or older. Biosketches must be prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(D) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(E) For all project(s) involving human or animal subjects, documentation of all required institutional review board (IRB) or institutional animal care and use committee (IACUC) approvals. Documents must be provided on IRB or IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(v) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All non-form documents must conform to the following requirements:

(A) Eight and one-half by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

**(c) Review by the WSLCB's designated scientific reviewer.**

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the WSLCB's application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372 (1) and (2). The scientific reviewer may require the applicant to provide additional information if the scientific reviewer determines that more information is necessary to complete the review.

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality; ~~(and)~~

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified;

(C) Review all information, including the budget, to evaluate whether the scope and design of the proposed project matches the budget and resources of the applicant; and

(D) The scientific reviewer may require the applicant to submit to a site inspection. The site inspection may occur after the initial review and before the license is issued to evaluate the adequacy of the location, facilities, or equipment to complete the proposed project.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the WSLCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The WSLCB will provide written evaluations to applicants following completion of the review process by the reviewer along with the WSLCB's approval or denial of the research license.

(d) **WSLCB requirements and licensing process.** If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the WSLCB.

(i) The WSLCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020 except that research license applicants are not subject to prioritization under subsection (3) of that section;

(ii) Funding of the proposed research must be disclosed by the applicant(s) in amount, timing and source(s). Funding sources may include organizational resources and individuals and organizations that are not part of the person, organization, agency, or business entity applying for the research license. Out-of-state resources may be included, but must be identified;

(iii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iv) The applicant must demonstrate access to and proficiency with the traceability system; and

(v) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

(3) **Research license withdrawal and denials.**

(a) The WSLCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the WSLCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The WSLCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the WSLCB or the reviewer.

(c) If the WSLCB denies a research application for the reasons provided in (b)(iii) of this subsection or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the WSLCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

(4) **Reporting required.**

(a) The WSLCB or the WSLCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The WSLCB's designated reviewer must submit an annual status report of all completed and ongoing research projects for the previous year to the WSLCB by December 31st of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the WSLCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.

(5) **Adding an additional research project or changing existing approved research project process (after licensure).**

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research

project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the WSLCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

**(6) Research license renewals.**

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer ninety days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within thirty days prior to or after the renewal date. The status report or application must be received by the reviewer within thirty days of the ninety-day renewal notice from the WSLCB or the license will not be renewed.

(b) The reviewer will notify the WSLCB in writing if the licensee meets the requirements for renewal not later than fifteen days prior to the licensee's renewal date.

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

(d) The WSLCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the WSLCB will not renew the license.

**(7) License revocation.**

(a) The WSLCB may revoke an application for the following reasons:

(i) The WSLCB has reason to believe that marijuana is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued;

(iv) The WSLCB finds that the licensee possesses marijuana plants, marijuana, or marijuana products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the WSLCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the WSLCB in writing. The voluntary

cancellation of a research license does not result in a hearing right.

**(8) Marijuana disposal requirements.**

(a) Licensees must dispose of marijuana as provided in WAC 314-55-097.

(b) Licensees must dispose of marijuana if the research license is discontinued for any reason. A licensee may transfer plants to another marijuana research licensee. A licensee may work with the WSLCB to dispose of marijuana or marijuana plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.

AMENDATORY SECTION (Amending WSR 16-19-102, filed 9/21/16, effective 10/22/16)

**WAC 314-55-075 (~~What is a~~) Marijuana producer license (~~and what are the~~) Privileges, requirements, and fees (~~related to a marijuana producer license?~~).**

(1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer (~~can~~) may also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees; (~~and~~)

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in (~~WAC 314-55-410~~) this chapter; and

(iii) Immature marijuana plants or clones and marijuana seeds to a licensed marijuana researcher under the conditions provided in this chapter.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. In addition, outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible

for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee ~~((will be))~~ is responsible for all fees required for ~~((the))~~ criminal history checks.

(4) ~~((The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB.))~~ The application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window ~~((after the initial evaluation of the applications received and))~~ at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035, in no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production ~~((will be imposed at a later date))~~ cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - Less than two thousand square feet;
- (b) Tier 2 - Two thousand square feet up to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet up to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or
- (b) Indoor grows - Six months of their annual harvest.

(10) A producer may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical

or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(11) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-077 ((What is a)) **Marijuana processor license ((and what are the))—Privileges, requirements, and fees ((related to a marijuana processor license?))**, (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label ~~((usable))~~ useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) **Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The WSLCB may reopen the marijuana processor application window at subsequent times when the WSLCB deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor ((is allowed to)) may blend tested ~~((usable))~~ useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee ~~((provid-~~

ing)) so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

~~((3)) (b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.~~

**(6) Recipes, product, packaging, and labeling approval.**

(a) A marijuana processor licensee must obtain label and packaging approval from the WSLCB for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the WSLCB for approval. More information on the product, packaging, and label review process is available on the WSLCB's web site at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the WSLCB. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the WSLCB or its designee.

(c) If the WSLCB denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing ((per)) under chapter 34.05 RCW, Administrative Procedure Act.

~~((4)) (7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.~~

~~((5)) (8) Marijuana-infused edible products in solid or liquid form must ((meet the following requirements:~~

~~(a) If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.~~

~~(b) The label must prominently display the number of servings in the package.~~

~~(c) Marijuana-infused solid edible products must);~~

~~(a) Be homogenized to ensure uniform disbursement of cannabinoids throughout the product((-~~

~~(d) All marijuana-infused solid edibles must)); and~~

~~(b) Until January 1, 2019, prominently display on the label "This product contains marijuana."~~

~~((6) Marijuana-infused edible products in liquid form must meet the following requirements:~~

~~(a) If there is more than one serving in the package, a measuring device must be included in the package with the product.~~

~~(b) The label must prominently display the number of servings in the package and the amount of product per serving.~~

~~(e) Marijuana-infused liquid edibles must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.~~

~~(d) All marijuana-infused liquid edibles must prominently display on the label "This product contains marijuana."~~

~~(7)) (9) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that require cooking or baking by the consumer are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.~~

~~(a) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.~~

~~(b) Other food items that may not be infused with marijuana to be sold in a retail store ((are)) include:~~

~~(i) Any food that has to be acidified to make it shelf stable;~~

~~(ii) Food items made shelf stable by canning or retorting;~~

~~(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);~~

~~(iv) Fruit or vegetable butters;~~

~~(v) Pumpkin pies, custard pies, or any pies that contain egg;~~

~~(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and~~

~~(vii) Dried or cured meats.~~

~~(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.~~

~~(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.~~

~~(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.~~

~~(f) The WSLCB may designate other food items that may not be infused with marijuana.~~

~~((8) The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the WSLCB or its designee.~~

~~(9) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.~~

(10) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(11) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015 (10) and (11) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The WSLCB will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the WSLCB to suspend or revoke a marijuana license.

(12) The WSLCB will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB. The WSLCB may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the WSLCB deems necessary.

(13) A currently licensed marijuana producer may submit an application to add a marijuana processor license at the location of their producer license providing they do not already hold three processor licenses.

(14) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~(15))~~ (10) Marijuana processor licensees are allowed to have a maximum of six months of their average ((usable)) useable marijuana and six months average of their total production on their licensed premises at any time.

~~((16))~~ (11) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor

B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(12) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor ((must)) may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 16-19-102, filed 9/21/16, effective 10/22/16)

**WAC 314-55-079 ((What is a)) Marijuana retailer license ((and what are the))—Privileges, requirements, and fees ((related to a marijuana retailer license?)).** (1) A marijuana retailer license allows the licensee to sell only ((usable)) useable marijuana, marijuana concentrates, marijuana-infused products, ((and)) marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) ((Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.)) The WSLCB may accept applications for marijuana retail licenses at time frames published on its web site at [www.lcb.wa.gov](http://www.lcb.wa.gov). Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB web site at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

**(4) Application and license fees.**

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is ~~((also))~~ responsible for ~~((paying the))~~ fees required by the approved vendor for fingerprint evaluation.

~~((5))~~ (b) The annual fee for issuance and renewal of a marijuana ~~((retailer's))~~ retailer license is one thousand ~~three~~ hundred ~~eighty-one~~ dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee ~~((will be))~~ is responsible for all fees required for the criminal history checks.

~~((6))~~ (5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

~~((7))~~ (8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

~~((8))~~ (11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined ~~((in the transportation rules))~~ in WAC 314-55-085.

~~((9))~~ (12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

~~((10))~~ (13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. ~~((Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.))~~

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-080 Medical marijuana endorsement.**

**(1) A medical marijuana endorsement added to a mari-**

**juana retail license allows the marijuana retail licensee to:**

(a) Sell marijuana for medical use to qualifying patients and designated providers; and

(b) Provide marijuana at no charge, at their discretion, to qualifying patients and designated providers.

(2) Qualifying patients between eighteen and twenty-one years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement and may purchase products for their personal medical use. Qualifying patients who are under the age of eighteen with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement, but may not purchase products for their personal medical use. Only a designated provider may purchase products for a qualifying patient under the age of eighteen who holds a valid recognition card.

**(3) To maintain a medical marijuana endorsement in good standing, a marijuana retailer must:**

(a) Follow all rules adopted by the department of health regarding retail sales of medical marijuana;

(b) Have a consultant on staff in accordance with department of health rules;

(c) Prohibit the medical use of marijuana by anyone at the retail outlet at all times, including medical use by qualifying patients;

(d) Maintain at all times, a representative assortment of marijuana products necessary to meet the needs of qualified patients and designated providers;

(e) Not market marijuana concentrates, ~~((usable))~~ useable marijuana, or marijuana-infused products in a way that make them especially attractive to minors;

(f) Demonstrate the ability to enter qualifying patients and designated providers in the medical marijuana authorization database established by the department of health;

(g) Issue recognition cards and agree to enter qualifying patients and designated providers into the database in compliance with the department of health standards;

(h) Keep ~~((copies of the qualifying patient's or designated provider's recognition card or equivalent records to document the validity of tax exempt sales for a minimum of three years))~~ records to document the validity of tax exempt sales as prescribed by the department of revenue for a minimum of five years. For the documentation requirements in RCW 69.50.375 (3)(e), licensees are not required to separately keep copies of the qualifying patient's or designated provider's recognition card because this information is stored in the medical marijuana authorization database;

(i) Train employees on the following:

(i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization database;

(ii) Recognition of valid recognition cards; and

(iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, ~~((usable))~~ useable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

~~((3))~~ (4) **A marijuana retailer holding a medical marijuana endorsement may sell products with a THC concentration of 0.3 percent or less.** The licensee may also provide these products at no charge to qualifying patients or designated providers.

~~((4))~~ (5) **Unlicensed practice of medicine.** No owner, employee, or volunteer of a retail outlet and holding a medical marijuana endorsement may:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products.

~~((5))~~ (6) Failure to comply with subsections (3) and ~~((4))~~ (5) of this section may result in suspension or revocation of the medical marijuana endorsement.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-083 (~~What are the~~) Security and traceability requirements for ~~(\*)~~ marijuana licensees~~(?)~~.** The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of marijuana. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.

(a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.

(b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.

(c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request.

(d) Employees, visitors, and other persons at a marijuana licensed premises, including persons engaged in the transportation of marijuana, must provide identification to a WSLCB enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be ~~(utilized)~~ used.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system

with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement ~~((shall))~~ **must** allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility ~~((shall))~~ **must** be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. ~~((are))~~ Controlled areas include:

~~((i))~~ (a) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Rooms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.

~~((ii))~~ (b) All point-of-sale (POS) areas.

~~((iii))~~ (c) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

~~((iv))~~ (d) Any room or area storing a surveillance system storage device.

~~((b) All marijuana, marijuana concentrates, or marijuana infused products that are intended to be removed or transported between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the WSLCB or designees.)~~

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the WSLCB. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of ~~((usable))~~ **useable** marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following informa-

tion is required and must be kept completely up-to-date in a system specified by the WSLCB:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana concentrates, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When ~~((usable))~~ useable marijuana, marijuana concentrates, or marijuana-infused products are transported;

(e) Any theft of ~~((usable))~~ useable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

~~((f))~~ ~~((There is a seventy two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;~~

~~((g))~~ ~~There is a twenty four hour mandatory waiting period after the notification described in this subsection to allow for inspection before marijuana plants, seeds, plant tissue cultures, or lots of marijuana are transported from a producer to another producer or to a processor;~~

~~((h))~~ ~~There is a twenty four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, marijuana concentrates, or marijuana-infused products are transported from a processor to another processor or to a retailer;~~

~~((i))~~ ~~All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually;~~

~~((j))~~ ~~((g))~~ A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of ~~((usable))~~ useable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana concentrates, marijuana-infused products, and marijuana waste;

~~((k))~~ ~~((h))~~ All marijuana, ~~((usable))~~ useable marijuana, marijuana-infused products, marijuana concentrates, seeds, plant tissue, clone lots, and marijuana waste must be physically tagged with the ~~((sixteen digit identification number))~~ unique identifier generated by the traceability system and tracked;

~~((l))~~ ~~((i))~~ All point-of-sale records;

~~((m))~~ ~~((j))~~ Marijuana excise tax records;

~~((n))~~ ~~((k))~~ All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

~~((o))~~ ~~((l))~~ All ~~((free))~~ vendor samples provided to another licensee for purposes of education or negotiating a sale;

~~((p))~~ ~~((m))~~ All samples used for testing for quality by the producer or processor;

~~((q))~~ ~~((n))~~ Samples containing ~~((usable))~~ useable marijuana provided to retailers;

~~((r))~~ ~~((o))~~ Samples provided to the WSLCB or their designee for quality assurance compliance checks; and

~~((s))~~ ~~((p))~~ Other information specified by the board.

~~((5))~~ ~~Start up inventory for marijuana producers. Within fifteen days of starting production operations a pro-~~

~~ducer must have all nonflowering marijuana plants, clones, seeds, and plant tissue cultures physically on the licensed premises. The producer must, within twenty four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.))~~

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-084 ((Production of)) Marijuana plant production.** (1) Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(a) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

(b) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

(c) Potting soil, crop production aids, soil amendments, and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

(2) Examples of prohibited products:

(a) The use of products containing plant growth regulators not allowed for use on food crops including, but not limited to, any of the following ingredients, is prohibited:

~~((\*)~~ ~~((i))~~ Ancymidol;

~~((\*)~~ ~~((ii))~~ Chlormequat chloride;

~~((\*)~~ ~~((iii))~~ Clofencet;

~~((\*)~~ ~~((iv))~~ Colchicine;

~~((\*)~~ ~~((v))~~ Colloidal silver;

~~((\*)~~ ~~((vi))~~ Daminozide;

~~((\*)~~ ~~((vii))~~ Dikegulac-sodium;

~~((\*)~~ ~~((viii))~~ Flumetralin;

~~((\*)~~ ~~((ix))~~ Flurprimidol; and

~~((\*)~~ ~~((x))~~ Paclobutrazol.

(b) The use of vitamin-hormone products not intended for use on food crops is prohibited.

(c) The use of products containing the insecticide DDVP (Dichlorvos) is prohibited in all areas where marijuana is being grown or processed.

(3) Soil amendments, fertilizers, growing media, other crop production aids, and pesticides that do not conform to subsections (1) and (2) of this section cannot be used, kept, or stored on the licensed premises.

(4) The following marijuana and marijuana products are subject to seizure and destruction:

(a) Marijuana exposed to unauthorized soil amendments or fertilizers; and

(b) Marijuana with (~~detectable~~) levels of unauthorized pesticides or plant growth regulators as provided in WAC 314-55-108.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-087 (~~What are the~~) Recordkeeping requirements for marijuana licensees(~~?~~)**. (1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a (~~three-year~~) five-year period and must be made available for inspection if requested by an employee of the WSLCB:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records to include, but not limited to, training, payroll, and date of hire;

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing marijuana;

(h) Production and processing records, including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused marijuana products made, including at a minimum, the lots of (~~usable~~) useable marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product pro-

duced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing (~~usable~~) useable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana-infused product, or other item containing marijuana.

(q) Records of any marijuana product provided free of charge to qualifying patients or designated providers.

(2) If the marijuana licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 16-19-002, filed 9/7/16, effective 10/8/16)

**WAC 314-55-089 (~~What are the~~) Tax and reporting requirements for marijuana licensees(~~?~~)**. (1) (~~Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB.~~) Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

(a) On a form or electronic system designated by the WSLCB;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twenti-

eth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of ~~((usable))~~ useable marijuana, marijuana concentrates, and marijuana-infused products.

(c) Product inventory reductions that are not adequately documented will be deemed to be sales and will be assessed the excise tax.

(d) Excise tax collected in error must either be returned to the customer(s) or remitted to the WSLCB if returning to the customer(s) is not possible.

(5) **Payment methods:** Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW. If a licensee uses a money transmitter service, the licensee must remit payments in U.S. dollars.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post

office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-092 (~~What if a marijuana licensee fails to report or pay, or reports or pays late?~~) Failure to pay excise taxes and late payment of excise taxes.** (1) If a marijuana licensee does not submit its ~~((monthly reports and/or))~~ payment(s) to the WSLCB as required in WAC 314-55-089: The licensee is subject to penalties.

**Penalties:** A penalty of two percent per month will be assessed on the outstanding balance for any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day. Absent a postmark, the date received at the WSLCB or authorized designee, will be used to assess the penalty of two percent per month on ~~((payments received))~~ the outstanding balance after the twentieth day of the month following the month of sale.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the WSLCB to suspend or revoke a marijuana license.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-095 Marijuana servings and transaction limitations.** Personal possession limits and transaction limits are detailed in RCW 69.50.360 and 69.50.4013.

(1) For persons age twenty-one and older and qualifying patients or designated providers who are not entered into the medical marijuana authorization database, marijuana serving and transaction limitations are as follows:

(a) **Single serving.** A single serving of a marijuana-infused product must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(b) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed or otherwise taken into the body is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana concentrate cannot exceed one gram.

(c) **Transaction (~~(limitation)~~) limits.**

(i) A single transaction is limited to:

(A) One ounce of (~~(usable)~~) useable marijuana(~~(s)~~);

(B) Sixteen ounces of marijuana-infused product meant to be eaten or swallowed in solid form(~~(s)~~);

(C) Seven grams of marijuana-infused extract or marijuana concentrate for inhalation(~~(s)~~); and

(D) Seventy-two ounces of marijuana-infused product in liquid form (~~(meant to be eaten or swallowed)~~) for oral ingestion or applied topically to the skin; and

(E) Ten units of a marijuana-infused product otherwise taken into the body.

(ii) A licensee or employee of a licensee is prohibited from conducting a transaction that facilitates an individual in obtaining more than the personal possession amount.

(2) For qualifying patients and designated providers who are entered into the medical marijuana authorization database, serving and transaction limits are as follows:

(a) **Single serving.** Except as provided in chapter 246-70 WAC, a single serving of a marijuana-infused product must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(b) **Maximum number of servings.** Except as provided in chapter 246-70 WAC, the maximum number of servings in any one single unit of marijuana-infused product meant to be eaten, swallowed or applied is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana concentrate cannot exceed one gram.

(c) **Transaction limitation.** A single transaction by a retail store with a medical marijuana endorsement to a qualifying patient or designated provider who is entered into the medical marijuana database is limited to three ounces of (~~(usable)~~) useable marijuana, forty-eight ounces of marijuana-infused product meant to be eaten or swallowed in solid form, twenty-one grams of marijuana-infused extract or marijuana concentrate for inhalation, and two hundred sixteen ounces of marijuana-infused product in liquid form meant to be eaten or swallowed.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-096 Vendor, educational, and internal quality control samples.** (1) **Vendor samples:** Producers or processors may provide free samples of (~~(usable)~~) useable marijuana, marijuana-infused products, and marijuana concentrates (~~(in order)~~) to negotiate a sale on product the retail licensee does not currently carry. All vendor sample limits are based on calendar months. The producer or processor must record the amount of each vendor sample and the processor or retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a "vendor sample" to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the vendor sample in the traceability system prior to sampling.

(a) Vendor samples may only be given to and used by licensees or employees of licensees who have product ordering authority or employees who provide input on product to licensees or employees of licensees who have purchasing authority to inform purchasing decisions as detailed in a written business policy.

(b) Producers may not provide any one licensed processor more than eight grams of marijuana flower per month free of charge for the purpose of negotiating a sale.

(~~((b))~~) (c) Processors may not provide any one licensed retailer more than eight grams of (~~(usable)~~) useable marijuana per month free of charge for the purpose of negotiating a sale.

(~~((c))~~) (d) Processors may not provide any one licensed retailer more than eight units of marijuana-infused products in solid form meant to be ingested orally or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single (~~(sample)~~) unit may exceed 10 mg of THC.

(~~((d))~~) (e) Processors may not provide any one licensed retailer more than eight units of marijuana-infused product in liquid form meant to be eaten, swallowed, or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single (~~(sample)~~) unit may exceed 10 mg of THC.

(~~((e))~~) (f) Processors may not provide any one licensed retailer more than eight units of marijuana-infused products meant to be applied topically per month free of charge for the purpose of negotiating a sale.

(g) Processors may not provide any one licensed retailer more than two units of marijuana-infused extract meant for inhalation or infused marijuana mix per month free of charge for the purpose of negotiating a sale. No single (~~(sample)~~) unit may exceed 0.5 g.

(~~((f))~~) (h) A marijuana producer must make quality assurance test results available to any processor receiving samples to negotiate a sale. The producer must also provide a statement that discloses all pesticides applied to the marijuana plants and growing medium during production.

(~~((g))~~) (i) A marijuana processor must make quality assurance test results available to any retailer receiving samples to negotiate a sale. If a marijuana extract was added to the product, the processors must disclose the type of extraction process and any solvent, gas, or other chemical

used in the extraction process, or any other compound added to the extract.

~~((2))~~ **(j) Vendor sample labeling:** All vendor samples must be clearly labeled as a vendor sample and meet all labeling requirements of the product to be sampled.

~~((a) Sixteen digit identification))~~ **(i) The unique identifier number generated by the traceability system;**

~~((b))~~ **(ii) The UBI number of the licensed entity providing the sample; and**

~~((c))~~ **(iii) Weight of the product in ounces and grams or volume as applicable.**

~~((3))~~ **(2) Education sampling.** Processors may provide free samples of ~~((usable))~~ useable marijuana, marijuana-infused products, and marijuana concentrates to retail licensees to give to ~~((their budtender))~~ the licensee's employees for educational purposes. Products being sampled must be carried by the licensed retailer. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as "~~((budtender))~~ education sample" and recorded on a transport manifest. Once the retailer receives the sample, the retailer must accept the sample in the traceability system prior to distributing samples to the retailer's employees. All ~~((budtender))~~ employees at a licensed retail location who receive educational samples must be entered into the traceability system for the purpose of distributing education samples. ~~((Prior to sampling the receiving retailer must accept the sample in the traceability system, and distribute the education sample to the retail employee.~~

~~(a) All education samples are limited to a total of ten units per budtender employee per month, with a maximum of one hundred units per retail location))~~

(a) Retailers are restricted to receiving a maximum of one hundred sample units per calendar month. No more than ten sample units may be provided to any one employee per calendar month.

~~(b) The maximum size of education samples ((for education)) are:~~

~~(i) ((Usable)) Useable marijuana, marijuana mix, and infused marijuana mix - One unit not to exceed ((.5 g)) 0.5 g.~~

~~(ii) Marijuana infused solid or liquid product meant to be ((eaten or swallowed)) ingested orally or otherwise taken into the body - One unit not to exceed 10 mg THC.~~

~~(iii) Marijuana-infused extract for inhalation - One unit not to exceed ((.25 g)) 0.25 g.~~

~~(iv) Marijuana-infused products for topical application - One unit not to exceed sixteen ounces.~~

~~(c) ((Products being sampled must be carried by the licensed retail premises.~~

~~((d))~~ Distribution and consumption of all educational samples is limited to retail employees who directly sell product to retail customers. Retail employees who are not involved in direct sales to customers are not eligible for education samples.

(d) Marijuana retail licensees are prohibited from providing educational samples to their employees as a form of compensation.

(e) A marijuana processor must make quality assurance test results available to any retailer receiving education samples. If a marijuana extract was added to the product, the pro-

cessors must disclose the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.

**(f) Education sample labeling:** All education samples must be clearly labeled ~~((as "budtender" samples))~~ "education sample" and include the following information on the label:

~~(i) ((Sixteen digit identification))~~ The unique identifier number generated by the traceability system;

(ii) The UBI number and trade name of the licensed entity providing the sample;

(iii) Product name or strain name for ~~((usable))~~ useable marijuana;

(iv) Weight of the product in ounces and grams or volume as applicable; and

(v) Potency labeled as required under WAC 314-55-105.

~~((4))~~ **(3)** A marijuana processor is not required to provide free samples to negotiate a sale or educational samples to a marijuana retail licensee, and a marijuana retail licensee may not require a marijuana processor to provide free sample to negotiate a sale or educational samples as a condition for purchasing the marijuana processor's products.

~~((5) Marijuana retail licensees may not provide educational samples to their budtender employees as a form of compensation.~~

~~((6))~~ **(4) Internal quality control sampling:** Producers and processors may conduct limited self-sampling for quality control. All sample limits are based on calendar months. ~~((Sampling))~~ Consuming samples for quality control may not take place at a licensed premises. Only the producer, processor, or employees of the licensee may sample the marijuana flower, ~~((usable))~~ useable marijuana, marijuana-infused products, marijuana concentrates, and edible marijuana-infused product. The producer or processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(a) Producers may sample two grams of marijuana flower per strain, per month for quality sampling.

(b) Processors may sample one unit per batch of a new ~~((edible))~~ marijuana-infused product meant to be ((eaten or swallowed)) ingested orally or otherwise taken into the body to be offered for sale on the market.

(c) Processors may sample up to one unit per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. No single sample may exceed 0.5 g.

(d) Processors may sample one unit per batch of a new marijuana mix packaged to be offered for sale on the market. No single sample may exceed 1 g.

(e) Processors may sample one unit per batch of a new infused marijuana mix to be offered for sale on the market. No sample may exceed 0.5 g.

~~((7))~~ **(f) Processors may sample one unit per batch of a new marijuana-infused product for topical application to be offered for sale on the market. No sample may exceed sixteen ounces.**

**(5) Retailers may not provide free samples to customers.**

~~((8))~~ **(6) Sample jars:**

~~((a))~~ A processor may provide a retailer free samples of ~~((usable))~~ useable marijuana packaged in a sample jar pro-

ected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of ~~((usable))~~ useable marijuana. The plastic or metal mesh screen must be sealed onto the container, and must be free of rips, tears, or holes greater than 2 mm in diameter. The sample jar and the ~~((usable))~~ useable marijuana within may not be sold to a customer and must be returned to the licensed processor who provided the ~~((usable))~~ useable marijuana and sample jar.

~~((9))~~ **(b) Sample jar labeling:** All ~~((vendor samples and))~~ sample jars must be labeled with the following:

~~((a) Sixteen digit identification))~~ **(i) The unique identifier** number ~~((given))~~ generated by the traceability system;

~~((b))~~ **(ii) Information** identifying whether it is a vendor sample or sample jar;

~~((c))~~ **(iii) The UBI** number of the licensed entity providing the sample; and

~~((d))~~ **(iv) Weight** of the product in ounces and grams or volume as applicable.

~~((10))~~ **(c) A marijuana processor** must make quality assurance test results available to any retailer receiving sample jars. The processor must also provide a statement that discloses all pesticides applied to the marijuana plants and growing medium during production.

**(d) If a marijuana extract** was added to the product, the processor must disclose to the retailer the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.

~~((11))~~ **(7) Transportation.** Outgoing and return vendor samples and sample jars must adhere to the transportation requirements in WAC 314-55-085.

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-097 Marijuana waste disposal—Liquids and solids.** (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it is designated as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 314-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 314-55-104).

(ii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, ~~((usable))~~ useable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered ~~((unusable))~~ unuseable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, or laboratory. Disposal of the marijuana waste rendered ~~((unusable))~~ unuseable must follow the methods under subsection (6) of this section.

~~((a))~~ Wastes that must be rendered ~~((unusable))~~ unuseable prior to disposal include, but are not limited to, the following:

~~((b))~~ **(a) Waste** evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

~~((c))~~ **(b) Marijuana plant waste**, including roots, stalks, leaves, and stems that have not been processed with solvent.

~~((d))~~ **(c) Solid marijuana sample plant waste** possessed by third-party laboratories accredited by the WSLCB to test for quality assurance that must be disposed of.

~~((e))~~ **(d) Other wastes** as determined by the WSLCB.

~~((f))~~ **A producer or processor** must provide the WSLCB a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.)

(5) The allowable method to render marijuana plant waste ~~((unusable))~~ unuseable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste ~~((unusable))~~ unuseable must be approved by the WSLCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the WSLCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the WSLCB.

(6) Marijuana wastes rendered ~~((unusable))~~ unuseable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered ~~((unusable))~~ unuseable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered ~~((unusable))~~ unuseable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered ~~((unusable))~~ unuseable.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-104 Marijuana processor license extraction requirements.** (1) Processors are limited to ~~((certain))~~ the methods, equipment, solvents, gases, and mediums detailed in this section when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane ~~((or other solvents or gases exhibiting low to minimal potential human health related toxicity approved by the WSLCB))~~. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO<sub>2</sub> gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch. The CO<sub>2</sub> must be of at least ninety-nine percent purity.

(4) Closed loop systems for hydrocarbon or CO<sub>2</sub> extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

(5) Certification from a licensed engineer must be provided to the WSLCB for professional grade closed loop systems used by processors to certify that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as:

(a) The American Society of Mechanical Engineers (ASME);

(b) American National Standards Institute (ANSI);

(c) Underwriters Laboratories (UL); or

(d) The American Society for Testing and Materials (ASTM).

(6) The certification document must contain the signature and stamp of a professional engineer and the serial number of the ex-traction unit being certified.

(7) Professional grade closed loop systems, other equipment used must be approved for use by the state building code council (SBCC) prior to use per WAC 51-54A-3800.

(8) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) Chapters 51-51 and 51-54A WAC;

(c) National Fire Protection Association (NFPA) standards;

(d) International Building Code (IBC);

(e) International Fire Code (IFC); and

(f) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

~~((8))~~ (9) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

~~((9))~~ (10) Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

~~((10))~~ (11) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

~~((11))~~ (12) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

~~((12))~~ (13) Parts per million for one gram of finished extract cannot exceed ~~((500 parts per million or))~~ residual solvent or gas ~~((when quality assurance tested per RCW 69.50.348))~~ levels provided in WAC 314-55-102.

#### NEW SECTION

**WAC 314-55-117 Use of payment services by retailers.** Retail licensees may use payment services to facilitate retail sales transactions under the following conditions:

(1) The payment service provider must:

(a) If applicable, be licensed and in good standing with the Washington state department of financial institutions; and

(b) Not have any interest, as a true party of interest or financier, in a marijuana licensee.

(2) The payment service provider may charge a convenience fee to customers provided that the customer has the option of canceling the transaction when informed of the convenience fee.

(3) The retail purchase price must be calculated in U.S. dollars.

(4) The marijuana excise tax required under RCW 69.50.535 must be collected from the customer based on the U.S. dollar purchase price.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-120 Ownership changes.** (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

| Type of change  | Type of application  | Fee   |
|---|--|---|
| Change in the <del>((qualifying persons))</del> <u>true parties of interest or owners</u> in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.  | New application.   | Application fee and annual fee for current license privilege. |
| Change in the <del>((qualifying persons))</del> <u>true parties of interest or owners</u> for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer. | Application for change in corporate officer and/or stockholder.            | \$75  |
| Change in the <del>((qualifying persons))</del> <u>true parties of interest or owners</u> in a limited liability company.   | Application for change of limited liability company member and/or manager. | \$75  |
| Accepting additional funds from a new or previously approved financier.   | Added financier.   | \$75  |

(2) Licensees must notify the WSLCB if there are any changes to marital status of any true party of interest in the license.

(3) The WSLCB may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

(4) If the WSLCB receives an application to change the ownership structure of a licensee, the application will be withdrawn unless one or more of the following is submitted:

(a) Proof that the party being removed was notified that they were being removed and they did not object within ninety days;

(b) Signed documentation from the true party of interest being removed for the licensed entity that they agree with the removal; or

(c) A final court document removing them.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-125 Change of location.** (1) Changing ~~((your))~~ a marijuana license to a new location requires ~~((an))~~ a change request application to the WSLCB, per the process outlined in WAC 314-55-020. WSLCB approval for change request applications must be obtained prior to any change of location of the licensed business.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.

NEW SECTION

**WAC 314-55-137 Receiverships.** (1) **Service and notice.**

(a) Any person who files any receivership or trustee action involving any marijuana licensee must serve WSLCB with original notice of the action. Service is accomplished by delivery of the original notice of action to WSLCB at: 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed notice must be addressed to: WSLCB, ATTN: Licensing - Receiverships, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Licensing - Receiverships, 3000 Pacific Avenue S.E., Olympia, WA 98501.

(b) Only if WSLCB receives original notice of the action and the receiver is selected in accordance with WSLCB's requirements will WSLCB treat the licensee as compliant with this section.

(2) **The role of a receiver when a licensee is placed in receivership.** If a marijuana licensee is placed under receivership, the receiver:

(a) Upon compliance with the requirements set forth below, the receiver may operate the licensee's business during the receivership period;

(b) The receiver assumes all licensee reporting responsibilities under this chapter including, but not limited to, full responsibility for maintaining records and entries into the traceability system maintained by the WSLCB; and

(c) The receiver is required to comply with all applicable laws under chapter 69.50 RCW and rules in this chapter including, but not limited to, the responsibilities of marijuana licensees set forth in WAC 314-55-110.

(d) Failure to abide by the requirements set forth in chapter 69.50 RCW and this chapter as specified in this subsection may result in enforcement action against the license under chapter 69.50 RCW and rules under this chapter and may result in the receiver being disqualified to act as a receiver by the WSLCB.

(3) **Who may serve as a receiver.** Any person who meets the requirements of chapter 7.60 RCW and the following additional requirements may serve as a receiver:

(a) Is currently in active status on the preapproved receiver list maintained by the WSLCB; or

(b) Is approved by the WSLCB under the requirements in subsection (5) of this section to serve as a receiver of a marijuana licensee.

**(4) Qualifying for the WSLCB's preapproved receiver list.**

(a) The following requirements must be met to qualify for the WSLCB's preapproved receiver list:

(i) Submit a complete receiver application with the WSLCB;

(ii) Be a Washington state resident for at least six months prior to the application for preapproval as a receiver and maintain residency throughout the term of the receivership;

(iii) Submit to and pass a criminal background check;

(iv) Provide any financial disclosures requested by the WSLCB; and

(v) Disclose any interests the person has in any marijuana licensee(s).

(b) Review and qualification requirements in this subsection only apply to persons or entities actively participating in the management of the receivership and do not apply to spouses of those persons or persons involved in a business entity or fellow members of a business entity that are not actively involved in the management of the receivership.

(c) A receiver placed on the preapproved receiver list maintained by the WSLCB must annually update all information and disclosures required under this subsection to remain eligible to act as a receiver and be on the preapproved receiver list. Annual updates must be made one calendar year after the date the receiver is approved.

**(5) Appointing a receiver who is not preapproved by the WSLCB.**

(a) Within two days of filing of any action to appoint a receiver, a proposed receiver must:

(i) Submit a complete application with the WSLCB to serve as receiver for the licensee;

(ii) Be a Washington resident for six months prior to appointment as a receiver and maintain residency throughout the term of the receivership;

(iii) Submit to and pass a criminal background check;

(iv) Provide any financial disclosures requested by the WSLCB; and

(v) Disclose any interest the proposed receiver has in any marijuana licensee(s).

(b) Review and qualification requirements in this subsection only apply to persons or entities actively participating in the management of the receivership and do not apply to spouses of those persons or persons involved in a business entity or fellow members of a business entity that are not actively involved in the management of the receivership.

(c) If the proposed receiver is denied approval by WSLCB at any time, a substitute receiver may be proposed for WSLCB approval. The substitute receiver must provide all information required by this subsection.

(d) If the proposed receiver is not approved by WSLCB at the time the receiver is appointed by the court, the receiver will not be considered compliant with this section, and may be subject to penalty under chapter 69.50 RCW, or as provided in this chapter and may result in the receiver being disqualified to act as a receiver by the WSLCB.

**(6) Limitations on a person's ability to serve as a receiver.**

(a) As operators and controllers of licensed marijuana establishments, receivers are subject to the same limits as

licensees or any other person. Those limits include, but are not limited to:

(i) No person serving as a receiver of a licensed marijuana producer or licensed marijuana processor shall have a financial interest in, or simultaneously serve as a receiver for, a licensed marijuana retailer; and

(ii) No person shall serve as a receiver for, or be a true party of interest in, more than five marijuana retail licensees or more than three marijuana producer, processor, or producer/processor licensees at the same time.

(b) If the WSLCB determines that a receiver is violating or has violated the restrictions in this subsection, the receiver may be disqualified to act as a receiver by the WSLCB.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-140 Death or incapacity of a marijuana licensee.** (1) The appointed guardian, executor, administrator, (~~(receiver,)~~) trustee, or assignee must notify the WSLCB's licensing and regulation division in the event of the death, incapacity, (~~(receivership,)~~) bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The WSLCB may give the appointed guardian, executor, administrator, (~~(receiver,)~~) trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-185 (~~Does the~~) WSLCB (~~have the~~) right to inspect (~~my~~) premises or vehicles (~~licensed~~) associated with a license to produce, process, sell, research, or transport marijuana(~~?~~).** (1) The following must be available for inspection at all times by an enforcement officer of the WSLCB:

(a) All licensed premises used in the production, processing, storage, transportation, research, or sale of marijuana, (~~(usable)~~) useable marijuana, marijuana concentrates, marijuana-infused products, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business;

(b) Any vehicle assigned for the purpose of transporting marijuana, (~~(usable)~~) useable marijuana, marijuana concentrates, or marijuana-infused products at any licensed location, or while en route during transportation;

(c) Records as outlined in (~~(WAC 314-55-087 and 314-55-310)~~) this chapter; and

(d) Marijuana, (~~(usable)~~) useable marijuana, marijuana concentrates, or marijuana-infused products on the licensed premises for the purpose of analyzing samples (the licensee will be given a receipt for any product removed from the premises for this purpose).

(2) Every person being on a licensed premises or ~~((with))~~ within a transporting vehicle, or having charge thereof, must admit an enforcement officer of the WSLCB demanding to enter therein in pursuance of this section in the execution of his/her duty, and must not obstruct or attempt to obstruct the entry of such officer, or refuse to allow an officer to examine the premises, vehicles, records, and products subject to this section of the licensee.

**AMENDATORY SECTION** (Amending WSR 16-19-102, filed 9/21/16, effective 10/22/16)

**WAC 314-55-410 Cooperatives.** (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four qualifying patients or designated providers may become members of a cooperative;

(d) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on his or her recognition card. At the location, the qualifying patients or designated providers may possess the amount of ~~((usable))~~ useable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, ~~((usable))~~ useable marijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located ~~((in))~~ at the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. The following is required to register a cooperative:

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement from the property owner granting permission to engage in a cooperative must also be submitted that includes a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the marijuana is planned to be grown.

(3) WSLCB will contact the primary contact listed for each registered cooperative on an annual basis to ensure validity of recognition cards and to confirm the status, whether active or inactive, of the cooperative. If the WSLCB finds that the cooperative no longer meets the criteria required under this section, the WSLCB may not renew the cooperative registration.

(4) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and WSLCB staff.

~~((4))~~ (5) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

~~((5))~~ (6) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

~~((6))~~ (7) A person may request an administrative hearing to contest a denial of registration, nonrenewal, or a revocation of a cooperative's registration under ~~((subsections (4) and (5) of))~~ this section as provided in chapter 34.05 RCW.

~~((7) Cooperative members purchasing plants from licensed producers.~~

~~(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.~~

~~(b) Members of a cooperative who wish to purchase plants from a licensed producer must:~~

~~(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;~~

~~(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and~~

~~(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.~~

~~(e) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.)~~

NEW SECTION

**WAC 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers.** This section details the requirements for sales of immature plants or clones and seeds by licensed producers to members of a registered cooperative, qualifying patients, and designated providers.

(1) Medical marijuana patients who enter into the medical marijuana authorization database established and maintained by the department of health, receive a recognition card, and are members of a cooperative that has been granted a registration by the Washington state liquor and cannabis board (WSLCB) may purchase immature plants or clones and seeds to be grown in the cooperative from a licensed marijuana producer.

(2) Qualifying patients and designated providers who hold a valid unexpired recognition card and have been entered into the medical marijuana authorization database established and maintained by the department of health, may purchase immature plants or clones and seeds from a licensed marijuana producer.

(3) Members of a registered cooperative, qualifying patients, and designated providers who wish to purchase immature plants or clones and seeds from a licensed producer must:

(a) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased; and

(b) Provide the following information to a licensed producer:

(i) Proof of identification in the form of a state-issued identification card or other valid government-issued identification;

(ii) A valid recognition card; and

(iii) If the person purchasing immature plants or clones or seeds is a member of a registered cooperative, a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative.

(4) The physical transfer of marijuana plants between licensed producers and members of a cooperative, qualifying patients, or designated providers must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative, qualifying patients, or designated providers are prohibited.

(5) Members of registered cooperatives, qualifying patients, and designated providers are limited to purchasing no more than the maximum amount that the medical marijuana patient's authorization form allows of any combination of immature plants or clones and seeds in a single sale or cumulative sales within a calendar month from a licensed producer. It is the responsibility of the member of the registered cooperative, qualifying patient, or designated provider to ensure that they possess no more than the maximum number of plants allowed under their authorization forms and as provided in chapter 69.51A RCW.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-525 Group 2 regulatory violations.** Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses. Group 2 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

| Violation Type  | 1st Violation  | 2nd Violation in a three-year window  | 3rd Violation in a three-year window  | 4th Violation in a three-year window |
|---|--|---|---|--------------------------------------|
| <b>Hours of service:</b><br>Sales of marijuana between 12:00 a.m. and 8:00 a.m.<br>Chapter 314-55 WAC | 5-day suspension or \$1,000 monetary option  | 10-day suspension or \$2,500 monetary option  | 30-day suspension   | Cancellation of license              |
| <b>General advertising:</b><br>Violations<br>Chapter 314-55 WAC                                       | Retailer/transporter:<br>5-day suspension or \$1,000 monetary option<br><br>Producer/processor:<br>\$1,000 monetary fine | Retailer/transporter:<br>10-day suspension or \$2,500 monetary option<br><br>Producer/processor:<br>Tier 1: \$2,500<br>Tier 2: \$5,000<br>Tier 3: \$7,500 monetary fine | Retailer/transporter:<br>30-day suspension<br><br>Producer/processor:<br>Tier 1: \$15,000<br>Tier 2: \$30,000<br>Tier 3: \$60,000 monetary fine | Cancellation of license              |

| Violation Type   | 1st Violation   | 2nd Violation in a three-year window   | 3rd Violation in a three-year window   | 4th Violation in a three-year window |
|--|---|--|--|--------------------------------------|
| <p><del>((Advertising violations – Sign exceeding 1,600 square inches; within 1,000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. Chapter 69.50 RCW Chapter 314-55 WAC</del></p> | <p>\$1,000 monetary fine</p>  | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine))</p>       |
| <p><b>Engaging in conditional retail sales.</b><br/>Chapter 314-55 WAC<br/>Chapter 69.50 RCW</p>   | <p>5-day suspension or \$1,000 monetary option</p>  | <p>10-day suspension or \$2,500 monetary option</p>  | <p>30-day suspension</p>   | <p>Cancellation of license</p>       |
| <p><b>Licensee/employee failing to display required security badge.</b><br/>Chapter 314-55 WAC</p>   | <p>Retailer/transporter: 5-day suspension or \$500 monetary option<br/>Producer/processor: \$500 monetary fine</p>                                | <p>Retailer/transporter: 10-day suspension or \$1,500 monetary option<br/>Producer/processor: All tiers: \$1,500 monetary fine</p>   | <p>Retailer/transporter: 30-day suspension<br/>Producer/processor: All tiers: \$5,000 monetary fine</p>  | <p>Cancellation of license</p>       |
| <p><b>Failure to maintain required security alarm and surveillance systems.</b><br/>Chapter 314-55 WAC</p>   | <p>Retailer/transporter: 5-day suspension or \$2,500 monetary option<br/>Producer/processor: \$2,500 monetary fine</p>                            | <p>Retailer/transporter: 10-day suspension or \$5,000 monetary fine<br/>Producer/processor: Tier 1: \$5,000<br/>Tier 2: \$10,000<br/>Tier 3: \$15,000 monetary fine</p>    | <p>Retailer/transporter: 30-day suspension<br/>Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine</p>    | <p>Cancellation of license</p>       |
| <p><b>Records: Improper recordkeeping.</b><br/>Chapter 314-55 WAC</p>  | <p>Retailer/transporter: 5-day suspension or \$1,000 monetary option<br/>Producer/processor: \$1,000 monetary fine</p>                            | <p>Retailer/transporter: 10-day suspension or \$2,500 monetary option<br/>Producer/processor: Tier 1: \$2,500<br/>Tier 2: \$5,000<br/>Tier 3: \$7,500 monetary fine</p>    | <p>Retailer/transporter: 30-day suspension<br/>Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine</p>    | <p>Cancellation of license</p>       |
| <p><b>Failure to submit monthly tax((sales reports and/or)) payments.</b><br/>Chapter 69.50 RCW<br/>Chapter 314-55 WAC</p>   | <p>Retailer(<del>transporter</del>): 5-day suspension or \$1,000 monetary option<br/><del>((Producer/processor: \$1,000 monetary fine))</del></p> | <p>Retailer: 10-day suspension or \$2,500 monetary option<br/><del>((Producer/processor: Tier 1: \$2,500<br/>Tier 2: \$5,000<br/>Tier 3: \$7,500 monetary fine))</del></p> | <p>Retailer: 30-day suspension<br/><del>((Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine))</del></p> | <p>Cancellation of license</p>       |

| Violation Type   | 1st Violation   | 2nd Violation in a three-year window   | 3rd Violation in a three-year window   | 4th Violation in a three-year window  |
|--|---|--|--|---------------------------------------|
| <p><b>Signs:</b> Failure to post required signs.<br/>Chapter 69.50 RCW<br/>Chapter 314-55 WAC</p>                                      | <p>Retailer/transporter: 5-day suspension or \$500 monetary option<br/><br/>Producer/processor: \$500 monetary fine</p> | <p>Retailer/transporter: 10-day suspension or \$1,500 monetary option<br/><br/>Producer/processor: All tiers: \$1,500 monetary fine</p>                            | <p>Retailer/transporter: 15-day suspension or \$5,000 monetary option<br/><br/>Producer/processor: All tiers: \$5,000 monetary fine</p>  | <p>Cancellation of license</p>        |
| <p><b>Failure to utilize and/or maintain traceability.</b><br/>Chapter 314-55 WAC</p>  | <p>5-day suspension or \$2,500 monetary option<br/><br/>Producer/processor: \$2,500 monetary fine</p>                   | <p>Retailer: 10-day suspension or \$5,000 monetary fine<br/><br/>Producer/processor: Tier 1: \$5,000<br/>Tier 2: \$10,000<br/>Tier 3: \$15,000 monetary fine</p>   | <p>Retailer: 30-day suspension<br/><br/>Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine</p> | <p>Cancellation of license</p>        |
| <p><b>Violation of transportation requirements.</b><br/>Chapter 314-55 WAC</p>   | <p>Retailer: 5-day suspension or \$2,500 monetary option<br/><br/>Producer/processor: \$2,500 monetary fine</p>         | <p>Retailer: 10-day suspension or \$5,000 monetary fine<br/><br/>Producer/processor: Tier 1: \$5,000<br/>Tier 2: \$10,000<br/>Tier 3: \$15,000 monetary fine</p>   | <p>Retailer: 30-day suspension<br/><br/>Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine</p> | <p>Cancellation of license</p>        |
| <p><b>Marijuana sold below cost of acquisition, true value, or illegally given away.</b></p>   | <p>Retailer: 5-day suspension or \$1,000 monetary option<br/><br/>Producer/processor: \$2,500 monetary fine</p>         | <p>Retailer: 10-day suspension or \$5,000 monetary option<br/><br/>Producer/processor: Tier 1: \$5,000<br/>Tier 2: \$10,000<br/>Tier 3: \$15,000 monetary fine</p> | <p>Retailer: 30-day suspension<br/><br/>Producer/processor: Tier 1: \$15,000<br/>Tier 2: \$30,000<br/>Tier 3: \$60,000 monetary fine</p> | <p>Cancellation of license</p>        |
| <p><b><u>Retail sales: Use of an unauthorized money transmitter.</u></b><br/>Chapter 314-55 WAC</p>                                    | <p><u>5-day suspension or \$1,000 monetary option</u></p>   | <p><u>10-day suspension or \$2,500 monetary option</u></p>   | <p><u>30-day suspension</u></p>  | <p><u>Cancellation of license</u></p> |
| <p><b>Retail outlet selling unauthorized products.</b><br/>Chapter 69.50 RCW</p>   | <p>\$1,000 monetary fine</p>  | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine</p>          |
| <p><b>Retailer displaying products in a manner visible to the general public from a public right of way.</b><br/>Chapter 69.50 RCW</p> | <p>\$1,000 monetary fine</p>  | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine</p>   | <p>\$1,000 monetary fine</p>          |

| Violation Type   | 1st Violation                               | 2nd Violation in a three-year window         | 3rd Violation in a three-year window | 4th Violation in a three-year window |
|--|---|--|--------------------------------------|--------------------------------------|
| <b>Retail sales: Unauthorized marijuana-infused products, internet sales, and accepting returns.</b><br>Chapter 314-55 WAC | 5-day suspension or \$1,000 monetary option | 10-day suspension or \$2,500 monetary option | 30-day suspension                    | Cancellation of license              |

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-530 Group 3 license violations.** Group 3 violations are violations involving licensing requirements, license classification, and special restrictions. Group 3 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

| Violation Type  | 1st Violation   | 2nd Violation in a three-year window  | 3rd Violation in a three-year window  | 4th Violation in a three-year window |
|---|---|---|---|--------------------------------------|
| <b>True party of interest/financier violation.</b><br>Chapter 314-55 WAC  | Cancellation of license   |   |   |                                      |
| <b>Failure to furnish required documents.</b><br>Chapter 314-55 WAC   | Cancellation of license   |   |   |                                      |
| <b>Misuse or unauthorized use of marijuana license (operating outside of license class).</b><br>Chapter 69.50 RCW<br>Chapter 314-55 WAC | Retailer/transporter:<br>10-day suspension or \$5,000 monetary fine<br><br>Producer/processor:<br>Tier 1: \$5,000<br>Tier 2: \$10,000<br>Tier 3: \$15,000 monetary fine | Cancellation of license   |   |                                      |
| <b>Misrepresentation of fact.</b><br>Chapter 314-55 WAC   | Cancellation of license   |   |   |                                      |
| <b>Unauthorized change of business name.</b><br>Chapter 314-55 WAC  | 5-day suspension or \$1,000 monetary option<br><br>Producer/processor:<br>All tiers: \$500 monetary penalty   | 10-day suspension or \$1,500 monetary option<br><br>Producer/processor:<br>All tiers: \$1,500 monetary fine   | 30-day suspension or \$5,000 monetary option<br><br>Producer/processor:<br>All tiers: \$5,000 monetary fine                                     | Cancellation of license              |
| <b>Operating/floor plan:</b><br>Violations of a WSLCB approved operating plan.<br>Chapter 314-55 WAC                                    | 5-day suspension or \$1,000 monetary option<br><br>Producer/processor:<br>All tiers: \$1,000 monetary fine  | Retailer/transporter:<br>10-day suspension or \$2,500 monetary option<br><br>Producer/processor:<br>Tier 1: \$2,500<br>Tier 2: \$5,000<br>Tier 3: \$7,500 monetary fine | Retailer/transporter:<br>30-day suspension<br><br>Producer/processor:<br>Tier 1: \$15,000<br>Tier 2: \$30,000<br>Tier 3: \$60,000 monetary fine | Cancellation of license              |

| Violation Type   | 1st Violation   | 2nd Violation in a three-year window   | 3rd Violation in a three-year window | 4th Violation in a three-year window |
|--|---|--|--------------------------------------|--------------------------------------|
| <del>((Failing to gain WSLCB approval for changes in existing ownership. Chapter 69.50 RCW Chapter 314-55 WAC</del>        | 30-day suspension<br><del>Producer/processor:<br/>\$15,000 monetary fine and destruction of 50% of inventory))</del>  |  |                                      |                                      |
| <b>Failure to respond to administrative violation notice and/or failure to pay fines and penalties.</b> Chapter 314-55 WAC | \$1,000 monetary penalty  | Cancellation of license  |                                      |                                      |
| <b>Failure to maintain required insurance.</b> Chapter 314-55 WAC  | Retailer/transporter: 5-day suspension or \$2,500 monetary fine<br><br>Producer/processor:<br>Tier 1: \$2,500<br>Tier 2: \$5,000<br>Tier 3: \$7,500 monetary fine | Retailer/transporter: 30-day suspension or \$15,000 monetary option<br><br>Producer/processor:<br>Tier 1: \$15,000<br>Tier 2: \$30,000<br>Tier 3: \$60,000 monetary fine | Cancellation of license              |                                      |

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-55-081 Who can apply for a marijuana retailer license?

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-082 Insurance requirements.** Marijuana licensees ~~((shall provide))~~ must obtain insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the WSLCB that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance ~~((and if necessary,))~~ or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance shall not be less than one million dollars.

(a) This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants.

(b) The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising

out of the licensee's premises/operations, products, and personal injury. ~~((The limits of liability insurance shall not be less than one million dollars.))~~

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on ~~((all general liability, umbrella, and excess))~~ insurance policies required under this section. All policies shall be primary over any other valid and collectable insurance.

AMENDATORY SECTION (Amending WSR 18-05-001, filed 2/7/18, effective 3/10/18)

**WAC 314-55-155 Advertising requirements and promotional items—Coupons, giveaways, etc.** The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) **Advertising generally.** The following requirements apply to all advertising by marijuana licensees in Washington state.

(a) All marijuana advertising and labels of ~~((usable))~~ useable marijuana, marijuana concentrates, and marijuana-

infused products sold in the state of Washington must not contain any statement, or illustration that:

- (i) Is false or misleading;
- (ii) Promotes over consumption;
- (iii) Represents the use of marijuana has curative or therapeutic effects;
- (iv) Depicts a child or other person under legal age to consume marijuana, or includes:

(A) The use of objects, such as toys, inflatables, movie characters, cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume marijuana; or

(B) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(b) No marijuana licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a marijuana business or marijuana product, including marijuana concentrates, (~~usable~~) useable marijuana, or marijuana-infused product:

(i) In any form or through any medium whatsoever within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older unless the one thousand minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed retailer is located within one thousand feet of a restricted location listed in this paragraph;

(ii) On or in a private vehicle, public transit vehicle, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location;

(c) All advertising for marijuana businesses or marijuana products, regardless of what medium is used, must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A marijuana licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by marijuana licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed marijuana retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to sixteen hundred square inches.

(i) All text on outdoor signs, including billboards, is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.

(A) A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a marijuana product means an image or visual representation of (~~usable~~) useable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, web site address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No marijuana licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name, such as the business or trade name or the product brand, to identify the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising placed on windows within the premises of a licensed marijuana retail store facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned. For the purposes of this section, a "giveaway" does not include representative samples of products (edible products and topicals only) carried by a licensed retailer that are not infused with marijuana and are offered to customers on licensed marijuana retail premises for sampling purposes only.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product.";

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age twenty-one and older by the WSLCB or classified by the WSLCB as off limits to persons under twenty-one years of age; or

(ii) A venue restricted to persons age twenty-one and older and where persons under twenty-one years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by eleven feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.

**AMENDATORY SECTION** (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-310 Transportation license.** (1) A transportation license allows the licensee to physically transport or deliver marijuana, marijuana concentrates, and marijuana-infused products between licensed marijuana businesses within Washington state. The application fee for the transportation license is two hundred fifty dollars and the annual fee is one thousand three hundred dollars.

(2) Applicants for the transportation license must submit the following information:

(a) Personal/criminal history forms for all true parties of interest (see WAC 314-55-035);

The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Documents showing the right to the physical location to be licensed (purchase and sale agreement or lease in the name of the applicant);

(c) Copies of the current UTC common carrier permits. All vehicles and trailers must also be permitted by UTC as common carriers;

(d) Corporate information form or limited liability information form as applicable;

(e) Proof of insurance.

(i) Licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the licensees. Licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the WSLCB that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(ii) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(iii) Insurance carrier rating: The insurance required in (e)(i) of this subsection shall be issued by an insurance company authorized to do business within the state of Washington. Insurance must be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(iv) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

(3) **Transport manifest.** A complete printed transport manifest on a form provided by the WSLCB containing all information required by the WSLCB must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection if requested by an employee of the WSLCB or local law enforcement:

(a) Copies of transportation manifests for all deliveries;

(b) A transportation log documenting the chain of custody for each delivery to include driver(s) and vehicle(s) associated with each delivery;

(c) Bank statements and canceled checks for any accounts relating to the licensed business;

(d) Accounting and tax records related to the licensed business;

(e) Records of all financial transactions related to the licensed business, including invoices, contracts and/or agreements for services performed or received that relate to the licensed business;

(f) All employee records, to include training.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the transportation licensee or an employee of the transportation licensee who is at least twenty-one years of age may transport product. All drivers must carry a valid Washington driver's license with the proper endorsements when operating a vehicle in the transportation of product. All passengers in the vehicle transporting marijuana or marijuana products must be employees of the transportation licensee who are at least twenty-one years of age;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the WSLCB pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must be delivered or returned to the shipper within forty-eight hours from the time of pickup;

(f) Live plants may be transported in a fully enclosed, windowless locked trailer, or in a secured area within the inside body/compartment of a van or box truck. A secured area is defined as an area where solid or locking metal partitions, cages, or high strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed van or box truck. The secure compartment in the fully enclosed van or box truck must be free of windows. Live plants may not be transported in the bed of a pickup truck, a sports utility vehicle, or passenger car.

(6) For purposes of this chapter, any vehicle assigned for the purposes of transporting marijuana, (~~usable~~) useable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises and subject to inspection by enforcement officers of the WSLCB. Vehicles assigned for transportation may be

stopped and inspected by a WSLCB enforcement officer at any licensed location, or while en route during transportation.

**WSR 18-17-186**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed August 22, 2018, 10:59 a.m.]

Supplemental Notice to WSR 18-10-111.

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 October 3, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after October 17, 2018.

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by October 3, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by September 28, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revised rule will allow liquor licensed grocery stores to provide curbside service to customers ordering groceries online. The rule will ensure that retailers and customers have requirements in place for this service. Other changes to the existing rule are technical and provide clarification.

Reasons Supporting Proposal: The proposed rules allow curbside service for liquor licensed grocery stores that utilize online ordering and pickup. The rules outline requirements for curbside service of grocery orders that contain alcohol.

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: Janette Benham, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1760; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 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. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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 for licensees. The proposed rules allow grocery stores to provide curbside service to customers. Providing curbside service to customers is at the licensee's discretion.

August 22, 2018  
Jane Rushford  
Chair

#### NEW SECTION

**WAC 314-03-400 Curbside service.** (1) Grocery stores that have the appropriate liquor licenses may provide curbside service to customers who order groceries online and pick them up in designated pickup areas outside of the grocery store. Curbside service in a designated pickup area must be administered pursuant to all applicable RCW and WAC provisions. Drive-through service from pickup or pass-through windows is prohibited.

(2) Curbside pickup of groceries that include spirits, beer, and wine are allowed under the following conditions:

(a) Orders must include at least twenty-five dollars of items coded as grocery items.

(b) Orders must be delivered by an employee of the licensee to a vehicle parked in a designated pickup area owned or controlled by the licensee as part of the licensed premises.

(c) Orders may only be delivered and the sale completed if the name of the purchaser registered on the online account matches the name on the driver's license or ID of the individual accepting delivery.

(d) Employees delivering orders to the customer's vehicle and completing the sale must be at least eighteen years of age and be trained on verifying ID, recognizing signs of intoxication, and preventing youth access.

(e) Aside from a clear parent/guardian and child relationship, all occupants of the vehicle must be at least twenty-one years of age and provide proof of ID to the employee delivering the order.

(f) 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))~~ • Chapters 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))~~ Allow 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))~~ allow others ~~((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))~~ Allow any person to consume 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;

~~((within))~~ on any part of the licensed premises, any type of marijuana, usable marijuana, or marijuana-infused products to remain on any part of the licensed premises; or

~~((H))~~ (i) Sell or serve liquor by means of ("drive-in" or by "curb service.") drive-in, drive-through pickup, or pass-through pickup window.

(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.

### WSR 18-17-187

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed August 22, 2018, 11:06 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-089.

Title of Rule and Other Identifying Information: Chapter 182-535 WAC, Dental-related services; chapter 182-535A WAC, Orthodontic services; and WAC 182-500-0070 Medical assistance definitions—M.

Hearing Location(s): On September 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at [www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these rules to comply with legislation in SSB 5883 for providing dental services through managed care.

The agency is (1) adding a definition for managed care organization (MCO) into WAC 182-500-0070; (2) adding definitions for asynchronous, distant site, originating site,

prepaid ambulatory health plan (PAHP), synchronous, and teledentistry to WAC 182-535-1050; (3) updating managed care language to clarify clients enrolled in an MCO or PAHP must receive their dental services through that MCO or PAHP; (4) updating WAC 182-535-1066 title; (5) replacing the current limitation of "once every six months" with "two times per client, per provider in a twelve-month period" in WAC 182-535-1080; (6) adding a subsection to describe coverage for silver diamine fluoride; (7) adding a subsection to describe coverage for teledentistry; and (8) revising language about payment of enhanced fees.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5883, section 213 (1)(c), chapter 1, Laws of 2017.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Ruth Needham, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9967.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 does not impose any cost on small businesses.

August 22, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

**WAC 182-500-0070 Medical assistance definitions—M. "Managed care organization (MCO)" see WAC 182-538-050.**

**"Medicaid"** means the federal medical aid program under Title XIX of the Social Security Act that provides health care to eligible people.

**"Medicaid agency"** means the state agency that administers the medicaid program. The Washington state health care authority (HCA) is the state's medicaid agency.

**"Medicaid transformation project"** refers to the demonstration granted to the state by the federal government under section 1115 of the Social Security Act. Under this demonstration, the federal government allows the state to engage in a five-year demonstration to support health care systems, to implement reform, and to provide new targeted medicaid services to eligible clients with significant needs.

**"Medical assistance"** is the term the agency and its predecessors use to mean all federal or state-funded health care programs, or both, administered by the agency or its disig-

nees. Medical assistance programs are referred to as Washington apple health.

**"Medical care services (MCS)"** means the limited scope health care program financed by state funds for clients who are eligible for the aged, blind, or disabled (ABD) cash assistance (see WAC 388-400-0060) or the housing and essential needs (HEN) referral program (see WAC 388-400-0065) and not eligible for other full-scope programs due to their citizenship or immigration status.

**"Medical consultant"** means a physician employed by or contracted with the agency or the agency's designee.

**"Medical facility"** means a medical institution or clinic that provides health care services.

**"Medical institution"** See "institution" in WAC 182-500-0050.

**"Medical services card" or "services card"** means the card the agency issues at the initial approval of a person's Washington apple health benefit. The card identifies the person's name and medical services identification number but is not proof of eligibility. The card may be replaced upon request if it is lost or stolen, but is not required to access health care through Washington apple health.

**"Medically necessary"** is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

**"Medically needy (MN)" or "medically needy program (MNP)"** means the state and federally funded health care program available to specific groups of people who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income or resources above the CN standard may also qualify for MN.

**"Medically needy income level (MNIL)"** means the standard the agency uses to determine eligibility under the medically needy program. See WAC 182-519-0050.

**"Medicare"** is the federal government health insurance program under Titles II and XVIII of the Social Security Act. For additional information, see [www.Medicare.gov](http://www.Medicare.gov).

**"Medicare assignment"** means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

**"Medicare cost-sharing"** means out-of-pocket medical expenses related to services provided by medicare. For clients enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 182-517 WAC.

**"Minimum essential coverage"** means coverage under 26 U.S.C. Sec. 5000A(f).

**"Modified adjusted gross income (MAGI)"** means the adjusted gross income as determined by the Internal Revenue

Service under the Internal Revenue Code of 1986 (IRC) increased by:

((+)) (a) Any amount excluded from gross income under 26 U.S.C. Sec. 911;

((=)) (b) Any amount of interest received or accrued by the client during the taxable year which is exempt from tax; and

((=)) (c) Any amount of Title II Social Security income or Tier 1 railroad retirement benefits excluded from gross income under 26 U.S.C. Sec. 86. See chapter 182-509 WAC for additional rules regarding MAGI.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1050 (~~Dental-related services~~)**  
**Definitions.** The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. The medicaid agency also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

**"Access to baby and child dentistry (ABCD)"** is a program to increase access to dental services for medicaid eligible infants, toddlers, and preschoolers through age five. See WAC 182-535-1245 for specific information.

**"Alternate living facility"** is defined in WAC 182-513-1100.

**"American Dental Association (ADA)"** is a national organization for dental professionals and dental societies.

**"Anterior"** refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

**"Asynchronous"** means two or more events not happening at the same time.

**"Behavior management"** means using one additional professional staff, who is employed by the dental provider or clinic and who is not delivering dental treatment to the client, to manage the client's behavior to facilitate dental treatment delivery.

**"By-report"** means a method of reimbursement in which the department determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. Upon request the provider must submit a "report" that describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

**"Caries"** means carious lesions or tooth decay through the enamel or decay on the root surface.

• **"Incipient caries"** means the beginning stages of caries or decay, or subsurface demineralization.

• **"Rampant caries"** means a sudden onset of widespread caries that affects most of the teeth and penetrates quickly to the dental pulp.

**"Comprehensive oral evaluation"** means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

**"Conscious sedation"** means a drug-induced depression of consciousness during which a client responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

**"Core buildup"** means the building up of clinical crowns, including pins.

**"Coronal"** means the portion of a tooth that is covered by enamel.

**"Crown"** means a restoration covering or replacing the whole clinical crown of a tooth.

**"Current dental terminology (CDT)"** means a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

**"Current procedural terminology (CPT)"** means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

**"Decay"** means a term for caries or carious lesions and means decomposition of tooth structure.

**"Deep sedation"** means a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

**"Dental general anesthesia"** see **"general anesthesia."**

**"Dentures"** means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

**"Denturist"** means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

**"Distant site (location of dental provider)"** means the physical location of the dentist or authorized dental provider providing the dental service to a client through teledentistry.

**"Edentulous"** means lacking teeth.

**"Endodontic"** means the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

**"EPSDT"** means the agency's early and periodic screening, diagnostic, and treatment program for clients age twenty and younger as described in chapter 182-534 WAC.

**"Extraction"** see **"simple extraction"** and **"surgical extraction."**

**"Flowable composite"** means a diluted low-viscosity-filled resin-based composite dental restorative material that is used in cervical restorations and small, low stress bearing occlusal restorations.

**"Fluoride varnish, rinse, foam or gel"** means a substance containing dental fluoride which is applied to teeth, not including silver diamine fluoride.

**"General anesthesia"** means a drug-induced loss of consciousness during which a client is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

**"Interim therapeutic restoration (ITR)"** means the placement of an adhesive restorative material following caries debridement by hand or other method for the management of early childhood caries. It is not considered a definitive restoration.

**"Limited oral evaluation"** means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

**"Limited visual oral assessment"** means an assessment by a dentist or dental hygienist provided in a setting other than a dental office or dental clinic to identify signs of disease and the potential need for referral for diagnosis.

**"Medically necessary"** see WAC 182-500-0070.

**"Oral evaluation"** see **"comprehensive oral evaluation."**

**"Oral hygiene instruction"** means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

**"Originating site (location of client)"** means the physical location of the medicaid client as it relates to teledentistry.

**"Partials"** or **"partial dentures"** mean a removable prosthetic appliance that replaces missing teeth on either arch.

**"Periodic oral evaluation"** means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation.

**"Periodontal maintenance"** means a procedure performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms, calculus, and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

**"Periodontal scaling and root planing"** means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

**"Posterior"** means the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth

one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

**"Prepaid ambulatory health plan (PAHP)"** see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.

**"Prophylaxis"** means the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.

**"Proximal"** means the surface of the tooth near or next to the adjacent tooth.

**"Radiograph (X-ray)"** means an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

**"Reline"** means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

**"Root canal"** means the chamber within the root of the tooth that contains the pulp.

**"Root canal therapy"** means the treatment of the pulp and associated periradicular conditions.

**"Root planing"** means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation.

**"Scaling"** means a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

**"Sealant"** means a dental material applied to teeth to prevent dental caries.

**"Simple extraction"** means the extraction of an erupted or exposed tooth to include the removal of tooth structure, minor smoothing of socket bone, and closure, as necessary.

**"Standard of care"** means what reasonable and prudent practitioners would do in the same or similar circumstances.

**"Surgical extraction"** means the extraction of an erupted or impacted tooth requiring removal of bone and/or sectioning of the tooth, and including elevation of mucoperiosteal flap if indicated. This includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone, and closure.

**"Synchronous"** means existing or occurring at the same time.

**"Teledentistry"** means the variety of technologies and tactics used to deliver HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store-and-forward technology to deliver covered services within the dental care provider's scope of practice to a client at a site other than the site where the provider is located.

**"Temporomandibular joint dysfunction (TMJ/TMD)"** means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

**"Therapeutic pulpotomy"** means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

**"Usual and customary"** means the fee that the provider usually charges nonmedicaid customers for the same service or item. This is the maximum amount that the provider may bill the agency.

**AMENDATORY SECTION** (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1060 ((Dental-related services—))Client eligibility.** (1) Refer to WAC 182-501-0060 to see which apple health programs include dental-related services in their benefit package.

(2) ~~((Managed care clients are eligible under apple health fee for service for covered dental-related services not covered by their managed care organization (MCO), subject to the provisions of this chapter and other applicable agency rules.))~~ Clients enrolled in an agency-contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their dental services through that MCO or PAHP, except as described under WAC 182-538-095.

(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.

(b) Clients eligible for dental managed care on a voluntary basis include:

(i) American Indian/Alaska native (AI/AN) clients; and  
(ii) Clients who reside in a county that has only one MCO or PAHP.

(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.

(3) See WAC 182-507-0115 for rules for clients eligible under the alien emergency medical program.

(4) Exception to rule procedures as described in WAC 182-501-0160 are not available for services that are excluded from a client's benefit package.

**AMENDATORY SECTION** (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1066 ((Dental-related services—))Medical care services clients (((formerly general assistance (GA))))**. (1) The medicaid agency covers the following dental-related services for a medical care services client under WAC 182-501-0060 when the services are provided by a dentist to assess, diagnose, and treat pain, infection, or trauma of the mouth, jaw, or teeth, including treatment of postsurgical complications, such as dry socket:

(a) Limited oral evaluation;  
(b) Periapical or bitewing radiographs (X-rays) that are medically necessary to diagnose only the client's chief complaint;  
(c) Palliative treatment to relieve dental pain or infection;  
(d) Pulpal debridement to relieve dental pain or infection; and  
(e) Tooth extraction.

(2) Tooth extractions require prior authorization when:  
(a) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; or

(b) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(3) Each dental-related procedure described under this section is subject to the coverage limitations listed in this chapter.

AMENDATORY SECTION (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1080 (~~(Dental-related services—)~~ Covered—Diagnostic.** Clients described in WAC 182-535-1060 are eligible to receive the dental-related diagnostic services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Clinical oral evaluations.** The medicaid agency covers the following oral health evaluations and assessments, per client, per provider or clinic:

(a) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(b) Limited oral evaluations as defined in WAC 182-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client on the same day. The limited oral evaluation:

- (i) Must be to evaluate the client for a:
  - (A) Specific dental problem or oral health complaint;
  - (B) Dental emergency; or
  - (C) Referral for other treatment.

(ii) When performed by a dentist, is limited to the initial examination appointment. The agency does not cover any additional limited examination by a dentist for the same client until three months after a removable prosthesis has been delivered.

(c) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(d) Limited visual oral assessments as defined in WAC 182-535-1050, (~~once every six months~~) two times per client, per provider in a twelve-month period only when the assessment is:

- (i) Not performed in conjunction with other clinical oral evaluation services; and
- (ii) Performed by a licensed dentist or dental hygienist to determine the need for sealants or fluoride treatment or when triage services are provided in settings other than dental offices or clinics.

(2) **Radiographs (X-rays).** The agency:

(a) Covers radiographs per client, per provider or clinic, that are of diagnostic quality, dated, and labeled with the client's name. The agency requires:

- (i) Original radiographs to be retained by the provider as part of the client's dental record; and
- (ii) Duplicate radiographs to be submitted:
  - (A) With requests for prior authorization; or
  - (B) When the agency requests copies of dental records.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series once in a three-year period for clients age fourteen and older only if the agency has not paid for a panoramic radiograph for the same client in the same three-year period. The intraoral complete series includes at least fourteen to twenty-two periapical and posterior bitewings. The agency limits reimbursement for all radiographs to a total payment of no more than payment for a complete series.

(d) Covers medically necessary periapical radiographs for diagnosis in conjunction with definitive treatment, such as root canal therapy. Documentation supporting medical necessity must be included in the client's record.

(e) Covers an occlusal intraoral radiograph, per arch, once in a two-year period, for clients age twenty and younger.

(f) Covers a maximum of four bitewing radiographs once every twelve months.

(g) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the agency has not paid for an intraoral complete series for the same client in the same three-year period.

(h) Covers one preoperative and postoperative panoramic radiograph per surgery without prior authorization. The agency considers additional radiographs on a case-by-case basis with prior authorization. For orthodontic services, see chapter 182-535A WAC.

(i) Covers one preoperative and postoperative cephalometric film per surgery without prior authorization. The agency considers additional radiographs on a case-by-case basis with prior authorization. For orthodontic services, see chapter 182-535A WAC.

(j) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

(k) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the agency.

(3) **Tests and examinations.** The agency covers the following for clients who are age twenty and younger:

(a) One pulp vitality test per visit (not per tooth):

- (i) For diagnosis only during limited oral evaluations; and
- (ii) When radiographs or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the agency.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1082 (~~(Dental-related services—)~~ Covered—Preventive services.** Clients described in WAC 182-535-1060 are eligible for the dental-related preventive services listed in this section, subject to coverage limitations and client-age requirements identified for a specific service.

(1) **Prophylaxis.** The medicaid agency covers prophylaxis as follows. Prophylaxis:

(a) Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary or permanent dentition.

(b) Is limited to once every:

(i) Six months for clients age eighteen and younger;

(ii) Twelve months for clients age nineteen and older; or

(iii) Six months for a client residing in an alternate living facility or nursing facility.

(c) Is reimbursed according to (b) of this subsection when the service is performed:

(i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients from age thirteen through eighteen;

(ii) At least twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients age nineteen and older; or

(iii) At least six months after periodontal scaling and root planing, or periodontal maintenance services for clients who reside in an alternate living facility or nursing facility.

(d) Is not reimbursed separately when performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, gingivoplasty, or scaling in the presence of generalized moderate or severe gingival inflammation.

(e) Is covered for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to (a), (c), and (d) of this subsection and WAC 182-535-1099.

(2) **Topical fluoride treatment.** The agency covers the following per client, per provider or clinic:

(a) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age six and younger, three times within a twelve-month period with a minimum of one hundred ten days between applications.

(b) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients from age seven through eighteen, two times within a twelve-month period with a minimum of one hundred seventy days between applications.

(c) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, every three times within a twelve-month period during orthodontic treatment with a minimum of one hundred ten days between applications.

(d) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age nineteen and older, once within a twelve-month period.

(e) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients who reside in alternate living facilities or nursing facilities, every two times within a twelve-month period with a minimum of one hundred seventy days between applications.

(f) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(g) Topical fluoride treatment for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(3) **Silver diamine fluoride.**

(a) The agency covers silver diamine fluoride as follows:

(i) When used for stopping the progression of caries or as a topical preventive agent;

(ii) Allowed two times per client per tooth in a twelve-month period; and

(iii) Cannot be billed with interim therapeutic restoration on the same tooth when arresting caries or as a preventive agent.

(b) The dental provider or office must have a signed informed consent form on file for each client receiving a silver diamine fluoride application. The form must include the following:

(i) Benefits and risks of silver diamine fluoride application;

and  
(ii) Alternatives to silver diamine fluoride application;

and  
(iii) A color photograph example that demonstrates the post-procedure blackening of a tooth with silver diamine fluoride application.

(4) **Oral hygiene instruction.** Includes instruction for home care such as tooth brushing technique, flossing, and use of oral hygiene aids. Oral hygiene instruction is included as part of the global fee for prophylaxis for clients age nine and older. The agency covers individualized oral hygiene instruction for clients age eight and younger when all of the following criteria are met:

(a) Only once per client every six months within a twelve-month period.

(b) Only when not performed on the same date of service as prophylaxis or within six months from a prophylaxis by the same provider or clinic.

(c) Only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

~~((4))~~ (5) **Tobacco cessation counseling for the control and prevention of oral disease.** The agency covers tobacco cessation counseling for pregnant women only. See WAC 182-531-1720.

~~((5))~~ (6) **Sealants.** The agency covers:

(a) Sealants for clients age twenty and younger and clients any age of the developmental disabilities administration of DSHS.

(b) Sealants, other than glass ionomer cement, only when used on a mechanically or chemically prepared enamel surface.

(c) Sealants once per tooth:

(i) In a three-year period for clients age twenty and younger; and

(ii) In a two-year period for clients any age of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(d) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(e) Sealants on noncarious teeth or teeth with incipient caries.

(f) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

(g) Sealants are included in the agency's payment for occlusal restoration placed on the same day.

(h) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.

~~((6))~~ (7) **Space maintenance.** The agency covers:

(a) One fixed unilateral space maintainer per quadrant or one fixed bilateral space maintainer per arch, including re-plantation, for missing primary molars A, B, I, J, K, L, S, and T, when:

(i) Evidence of pending permanent tooth eruption exists; and

(ii) The service is not provided during approved orthodontic treatment.

(b) Replacement space maintainers on a case-by-case basis when authorized.

(c) The removal of fixed space maintainers when removed by a different provider.

(i) Space maintainer removal is allowed once per appliance.

(ii) Reimbursement for space maintainer removal is included in the payment to the original provider that placed the space maintainer.

**AMENDATORY SECTION** (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1098 (~~Dental related services~~)**

**Covered—Adjunctive general services.** Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through twenty on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (m) and clients with cleft palate diagnoses,

deep sedation/general anesthesia services do not require prior authorization.

(iii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.

(e) Covers office-based nonintravenous conscious sedation:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older, only when prior authorized.

(f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.

(g) Requires providers to have a current anesthesia permit on file with the agency.

(h) Covers administration of nitrous oxide once per day, per client per provider.

(i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(j) Pays for dental anesthesia services according to WAC 182-535-1350.

(k) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the agency for the services to be covered.

(2) **Professional visits.** The agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.

(b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.

(3) **Drugs and medicaments (pharmaceuticals).**

(a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.

(b) The agency covers therapeutic parenteral drugs as follows:

(i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age twenty and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

(A) Clients age eight and younger;

(B) Clients age nine through twenty, only on a case-by-case basis and when prior authorized;

(C) Clients any age of the developmental disabilities administration of DSHS;

(D) Clients diagnosed with autism;

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age twelve through twenty when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

(5) **Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

(i) Synchronous teledentistry at the distant site for clients of all ages; and

(ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client's record must include the following supporting documentation regarding teledentistry:

(i) Service provided via teledentistry;

(ii) Location of the client;

(iii) Location of the provider; and

(iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1245 Access to baby and child dentistry (ABCD) program.** The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; or

(iv) State children's health insurance program (SCHIP).

~~((e) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.))~~

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD pro-

gram. If enrolled, the client and an adult family member may receive:

- (a) Oral health education;
  - (b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and
  - (c) Assistance with transportation, interpreter services, and other issues related to dental services.
- (3) ~~((The medicaid agency pays enhanced fees only to))~~ Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:
- (a) Family oral health education. An oral health education visit:
    - (i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and
    - (ii) Must include documentation of all of the following in the client's record:
      - (A) "Lift the lip" training;
      - (B) Oral hygiene training;
      - (C) Risk assessment for early childhood caries;
      - (D) Dietary counseling;
      - (E) Discussion of fluoride supplements; and
      - (F) Documentation in the client's record to record the activities provided and duration of the oral education visit.
  - (b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;
  - (c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;
  - (d) Topical application of fluoride varnish;
  - (e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;
  - (f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:
    - (i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and
    - (ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.
      - (g) Therapeutic pulpotomy;
      - (h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;
      - (i) Resin-based composite crowns on anterior primary teeth; and
      - (j) Other dental-related services, as specified in the agency's current published documents.
- (4) The client's record must show documentation of the ABCD program services provided.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535A-0010** ~~((Orthodontic services—))~~  
**Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter.

**"Adolescent dentition"** means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

**"Appliance placement"** means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

**"Cleft"** means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

**"Comprehensive full orthodontic treatment"** means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

**"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

**"Craniofacial team"** means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

**"Crossbite"** means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

**"Dental dysplasia"** means an abnormality in the development of the teeth.

**"Ectopic eruption"** means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

**"EPSDT"** means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

**"Hemifacial microsomia"** means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

**"Interceptive orthodontic treatment"** means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

**"Limited orthodontic treatment"** means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or

at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

**"Malocclusion"** means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

**"Maxillofacial"** means relating to the jaws and face.

**"Occlusion"** means the relation of the upper and lower teeth when in functional contact during jaw movement.

**"Orthodontics"** means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

**"Orthodontist"** means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

**"Permanent dentition"** means those teeth that succeed the primary teeth and the additional molars that erupt.

**"Prepaid ambulatory health plan" or "PAHP"** see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.

**"Primary dentition"** means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

**"Transitional dentition"** means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535A-0020 (~~Orthodontic treatment and orthodontic services~~) Client eligibility.** (1) Subject to the limitations of this chapter, the medicaid agency covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate, for eligible clients through age twenty. Refer to WAC 182-501-0060 to see which Washington apple health programs include orthodontic services in their benefit package.

(2) Clients enrolled in an agency-contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their orthodontic services through that MCO or PAHP, except as described under WAC 182-538-095.

(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.

(b) Clients eligible for dental managed care on a voluntary basis include:

(i) American Indian/Alaska native (AI/AN) clients; and

(ii) Clients who reside in a county that has only one MCO or PAHP.

(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.

(d) If a client receiving orthodontic services through an MCO or PAHP chooses to transfer to another MCO or PAHP or to fee-for-service (FFS) during active orthodontic treat-

ment, the MCO or PAHP that initiated the orthodontic treatment remains responsible for payment until completion of the orthodontic treatment.

(e) If an FFS client transfers to an MCO or PAHP during active orthodontic treatment, the MCO or PAHP assumes payment responsibility until completion of the orthodontic treatment.

(3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 182-501-0175.

((3)) (4) Eligible clients may receive the same orthodontic treatment and orthodontic-related services for continued orthodontic treatment when originally rendered by a non-medicaid or out-of-state provider as follows:

(a) The provider must submit the initial orthodontic case study and treatment plan records with the request for continued treatment.

(b) The agency evaluates the initial orthodontic case study and treatment plan to determine if the client met the agency's orthodontic criteria per WAC 182-535A-0040 (1) through (3).

(c) The agency determines continued treatment duration based on the client's current orthodontic conditions.

(d) The agency does not cover continued treatment if the client's initial condition did not meet the agency's criteria for the initial orthodontic treatment. The agency pays a deband and retainer fee if the client does not meet the initial orthodontic treatment criteria.

## WSR 18-17-188

### PROPOSED RULES

### HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2018-02—Filed August 22, 2018, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-023.

Title of Rule and Other Identifying Information: WAC 182-08-015 Definitions, 182-08-180 Premium payments and premium refunds, 182-08-185 What are the requirements regarding premium surcharges?, 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?, 182-08-196 What happens if my health plan becomes unavailable due to a change in contracted service area or eligibility for medicare?, 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete required forms?, 182-08-198 When may a subscriber change health plans?, 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)?, 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment or for fac-

ulty employed by more than one institution of higher education?, 182-08-235 Employer group and charter school application process, 182-08-240 How will the health care authority (HCA) decide to approve or deny a group application?, 182-12-109 Definitions, 182-12-113 What are the obligations of a state agency in the application of employee eligibility?, 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits?, 182-12-123 Is dual enrollment prohibited?, 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment?, 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff?, 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) insurance coverage?, 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff?, 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA)?, 182-12-141 If an employee reverts from an eligible position, what happens to their public employees benefits board (PEBB) insurance coverage?, 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility?, 182-12-146 When is an enrollee eligible to continue public employee's benefits board (PEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA)?, 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal?, 182-12-171 When is a retiring employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-200 May a retiring employee or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state school district, a Washington state educational service district, or a Washington state charter school defer PEBB health plan enrollment under PEBB retiree insurance coverage?, 182-12-205 May a retiree or a survivor defer or voluntarily terminate public employees benefits board (PEBB) health plan enrollment under PEBB retiree insurance coverage?, 182-12-207 When can a retiree or an eligible dependent's public employees benefits board (PEBB) insurance coverage be terminated by the health care authority (HCA)?, 182-12-208 What are the requirements regarding enrollment in dental under public employees benefits board (PEBB) retiree insurance coverage?, 182-12-209 Who is eligible for retiree term life insurance?, 182-12-211 May an employee who is determined to be retroactively eligible for disability retirement enroll in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty, 182-12-260 Who are eligible dependents?, 182-12-262 When may subscribers enroll or remove

eligible dependents?, 182-12-263 National Medical Support Notice (NMSN), 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if the employee or retiree dies?, 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260?, and 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements.

Hearing Location(s): On September 25, 2018, at 10:00 a.m., at HCA, Cherry Street Plaza Building, Sue Crystal Conference Room 106A and B, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by September 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by September 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

#### 1. Implement PEBB policy resolutions:

- Amend WAC 182-08-187 which governs the process an employing agency would use to correct an eligibility or enrollment error.
- Authorize a retiree who is no longer eligible to remain enrolled in a PEBB health plan to remain enrolled in retiree term life insurance coverage.
- Authorize retirees and survivors to defer enrollment in a PEBB health plan if they are enrolled in the Civilian Health and Medical Program of the Department of Veteran's Affairs (CHAMPVA) coverage.

#### 2. Making technical amendments to:

- Change references to the PEBB appeals committee to instead refer to the PEBB appeals unit and changing cross-references to rules in chapter 182-16 WAC.
- Clarify that it is the PEBB program that sends and receives the COBRA election form, reviews COBRA eligibility, and receives COBRA payments.
- Clarify in WAC 182-12-146 that enrollees that do not fit the definition of qualified beneficiary under COBRA qualify for continuation of PEBB coverage as authorized by RCW 26.60.015 and PEBB through their policy resolution on May 23, 2000.
- Revise several definitions in WAC 182-08-015 and 182-12-109.
- Make child eligibility consistent within state statutes.
- Correct numbering errors in WAC 182-08-187.
- Clarify in WAC 182-08-197 that an employee's forms must be received by their employing state

agency or the applicable contracted vendor no later than thirty-one days after the employee becomes eligible for PEBB benefits.

- Revise WAC 182-08-198 to address when coverage begins for a member who enrolls in a Medicare Advantage plan.
- Clarify where enrollment forms should be submitted in WAC 182-08-198.
- Revise WAC 182-08-199 to clarify procedures during open enrollment and special open enrollment for FSA and DCAP and amending multiple rules to better align with salary reduction plan document language. Clarify each employer's responsibility for payment of the employer contribution when an employee transfers from one employing agency to another in WAC 182-08-200.
- Revise WAC 182-08-240 to improve readability.
- Amend procedural requirements in WAC 182-12-171 to add if a retiree employee elects to enroll a dependent in PEBB insurance coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee with a narrow exception.
- Update WAC 182-12-123 to refer to the appropriate WAC reference to enroll in PEBB retiree insurance coverage after deferring.
- Include more detail in WAC 182-12-205 regarding who is eligible and to reference the appropriate WAC for requirements to defer a PEBB retiree health plan.
- Add additional language to WAC 182-12-262 to make clear that a subscriber has to satisfy the enrollment requirements in WAC 182-12-262(4) in order to enroll eligible dependents.
- Clarify the enforcement of NMSN when a terminated employee elects self-only COBRA in WAC 182-12-263.
- Clarify the forty-five day rule related to premium payments and premium refunds by cross-referencing WAC 182-12-146 with WAC 182-08-180, clarify if WAC 182-08-180 is applicable to all or just employees eligible for the employer contribution.
- Clarify rules related to elected officials in WAC 182-12-180.
- Add additional language so it is clear that the surcharges are in addition to the monthly premium and cross-referenced additional rules within WAC 182-08-185 that apply.
- Clarify WAC 182-08-185 that a premium surcharge will be applied when a spouse or state-registered domestic partner is enrolled in medical coverage.
- Clarify that the dependent of a retiree must be enrolled in the same medical and dental plan with narrow exceptions in chapter 182-12 WAC.
- Amend a cross-reference to the definition of separated employee in WAC 182-12-171.
- Remove NMSN from the special open enrollment event rules in chapters 182-08 and 182-12 WAC because it is addressed in a separate rule.
- Clarify that the subscriber must maintain continuous enrollment in one of the types of coverage allowed and clarify timelines for deferral upon retirement and post-retirement in WAC 182-12-200 and 182-12-205.
- Clarify COBRA and the deferral process for surviving dependents in WAC 182-12-265 and 182-12-180.

### 3. Amending rule to improve administration of the PEBB program:

- Revise the employer group application process to authorize alternative requirements for employer groups that are not able to provide historical claims data and cost information as required in WAC 182-08-235.
- Clarify in chapter 182-08 WAC that an employee must provide evidence of the special open enrollment event in addition to the required form in order to make an enrollment change during a special open enrollment.
- Add an exception to WAC 182-12-205 regarding when PEBB insurance coverage will end for a member who enrolls in a Medicare Advantage plan. Clarifying that once a retiree voluntarily terminates the coverage, the retiree cannot reenroll in PEBB benefits unless the retiree becomes newly eligible.
- Change the reasonable alternative for enrollees who use tobacco products to require enrollees eighteen or older to attest to having enrolled in a cessation program and to require enrollees thirteen through seventeen to have accessed the required web site information.
- Revise WAC 182-12-262 to convey anti-rescission limitations in the PEBB program's discretion.
- Revise WAC 182-12-300 to include the requirement for subscribers who complete the well-being assessment and earn the \$25 gift card to claim the gift card within the same calendar year.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: ESSB 6241 and EHB 2242.

Rule is necessary because of federal law, 42 U.S.C. Secs. 300bb-1 through 300bb-8; 38 U.S.C. Secs. 4301 through 4335; 26 U.S.C. Sec. 125, 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code; and 42 U.S.C. § 1395w-114.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, 626 8th Avenue S.E., Olympia, WA, 360-725-0852; Implementation: Barbara Scott, 626 8th Avenue S.E., Olympia, WA, 360-725-0830; and Enforcement: Scott Palafox, 626 8th Avenue S.E., Olympia, WA, 360-725-1858.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 rules do not impose any cost on small businesses.

August 22, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-015 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll in or waive enrollment in PEBB medical. Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP)(~~(7)~~) and the medical flexible spending arrangement (FSA)(~~(7-08)~~). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays and Sundays.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of (~~PEBB~~) health plan coverage available to enrollees after a qualifying event occurs as administered under (~~Title XXII of the Public Health Service (PHS) Act~~) the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or PEBB insurance coverage extended by the public employees benefits board under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan (~~(authorized in chapter 41.05 RCW)~~) under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the

Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described in WAC 182-12-114 and 182-12-131(~~(, and the employee's eligible dependents as described in WAC 182-12-260)).~~).

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group, or charter school for employees eligible under WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; (~~charter school; or~~) and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under

the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ten percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Large claim" means a claim for more than \$25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" for eligible employees includes basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as optional life insurance and optional AD&D insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the employing agency and any supplemental long-term disability insurance offered to and paid by employees (~~(on an optional basis)).~~).

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan (~~(authorized in chapter 41.05 RCW))~~ under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

~~("PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.)~~

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171(~~(?)~~))

and 182-12-180), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or ~~((a))~~ an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in ~~((his or her))~~ their employer-based group medical when:

- ~~((Premiums are))~~ The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the Uniform Medical Plan (UMP) Classic (premiums)); and

- The benefits have an actuarial value of ~~((benefits is))~~ at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program (DCAP), medical flexible spending arrangement (FSA), or premium payment plan ((as authorized in chapter 41.05 RCW)) offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in PEBB medical. Employees eligible to participate in the salary reduction plan may enroll in or ~~((change))~~ revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, state agency, or charter school and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical, TRICARE plans, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains another employer-based group health plan as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-180 Premium payments and premium refunds.** Premiums and applicable premium surcharges are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (3) or (4).

(1) **Premium payments.** Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which PEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6)(a) through (f), 182-12-211, and 182-12-265; or electing to enroll in continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270, the first premium payment and applicable premium surcharge are due to the health care authority (HCA) no later than forty-five days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental or long-term disability insurance coverage. Premiums associated with life insurance coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the employing agency. If an employee elects optional

coverage as described in WAC 182-08-197 (1)(a) or (3)(a), the employee is responsible for payment of premiums from the month that the optional coverage begins.

~~((b))~~ (c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the ~~((health care authority (HCA). A subscriber's))~~ HCA. For subscribers not eligible for the employer contribution or employees eligible for the employer contribution as described in WAC 182-12-138, monthly premiums or applicable premium surcharges that remain~~((s))~~ unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become~~((s))~~ delinquent to pay the unpaid premium balance or surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain~~((s))~~ unpaid for sixty days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges ~~((was))~~ were paid. If it is determined by the ~~((authority))~~ HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the ~~((authority))~~ HCA may develop a reasonable ~~((repayment))~~ payment plan with the subscriber or the subscriber's legal representative upon request.

~~((e-A))~~ (d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges ~~((is))~~ are received by the ~~((authority))~~ HCA and the monthly premiums or applicable premium surcharges remain~~((s))~~ unpaid for thirty days; or

(ii) ~~((A))~~ Premium payments or applicable premium surcharges received by the ~~((authority is))~~ HCA are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain~~((s))~~ underpaid for thirty days past the date the monthly premiums or applicable premium surcharges ~~((was))~~ were due.

(2) **Premium refunds.** PEBB premiums and applicable premium surcharges will be refunded using the following method:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premiums and applicable premium surcharges paid during the three month adjustment period, except as indicated in WAC 182-12-148(5).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC ~~((182-16-025))~~ 182-16-2010, showing proof of extraordinary circumstances beyond ~~((his or her))~~ their control such that it was effectively impossible to submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums ~~((occurred))~~, the PEBB director, the director's designee, or the PEBB appeals ~~((committee))~~ unit may approve a refund of premiums and

applicable premium surcharges which does not exceed twelve months of premiums.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time ~~((he or she was))~~ they were enrolled under the federal program if approved by the PEBB director or the director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employee or beneficiary.

**AMENDATORY SECTION** (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-08-185 What are the requirements regarding premium surcharges?** (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly premium, when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, thirteen years and older, enrolled in ~~((his or her))~~ their public employees benefits board (PEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (vii) of this subsection:

(i) An employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits must complete the required form to enroll in PEBB medical as described in WAC 182-08-197 (1) or (3). The employee must include ~~((his or her))~~ their attestation on that form. The employee must submit the ~~((attestation to his or her))~~ form to their employing agency. If the employee's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins.

(ii) If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's PEBB medical, the subscriber must update ~~((his or her))~~ their attestation on the required form. An employee must submit the ~~((updated attestation to his or her))~~ form to their employing agency. Any other subscriber must submit ~~((his or her updated attestation))~~ their form to the PEBB program.

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, thirteen years and older, in PEBB medical as described in WAC 182-12-262, the subscriber must ~~((update his or her attestation))~~ attest for their dependent on the required form. An employee must submit the ~~((updated attestation to his or her))~~ form to their employing agency. Any other subscriber must submit ~~((his or her updated attestation))~~

their form to the PEBB program. A change that results in a premium surcharge will take effect the same date as PEBB medical begins.

(iv) An enrollee, thirteen years and older, who elects to continue medical coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, or 182-12-270, must provide an attestation on the required form if ~~((he or she has))~~ they have not previously attested as described in (a) of this subsection. The enrollee must submit ~~((his or her updated attestation))~~ their form to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(v) An employee or retiree who enrolls in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) ~~((and))~~ or (b), ~~((or))~~ 182-12-205 (6)(a) ~~((b), (c), (d), and (e))~~ through (f), or 182-12-211, must provide an attestation on the required form if ~~((he or she has))~~ they have not previously attested as described in (a) of this subsection. The employee or retiree must submit ~~((his or her updated attestation))~~ their form to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vi) A surviving spouse, state registered domestic partner, or dependent child, thirteen years and older, who enrolls in PEBB medical as described in WAC 182-12-180 (3)(a), 182-12-250(5) or 182-12-265, must provide an attestation on the required form to the PEBB program if ~~((he or she has))~~ they have not previously attested as described in (a) of this subsection. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vii) An employee who previously waived PEBB medical must complete the required form to enroll in PEBB medical as described in WAC 182-12-128(3). The employee must include ~~((his or her))~~ their attestation on that form. An employee must submit the ~~((attestation to his or her))~~ form to their employing agency. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

**Exceptions:**

(1) A subscriber enrolled in both medicare Parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives PEBB medical according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to ~~((his or her))~~ their account as long as the employee ~~((enrollment))~~ remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed the applicable reasonable alternative offered below:

(i) An enrollee who is eighteen years and older and uses tobacco products ~~((has access to a))~~ is currently enrolled in

the free tobacco cessation program through ((his or her)) their PEBB medical.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products ~~((may access))~~ accessed the information and resources aimed at teens on the Washington state department of health's web site at ~~((http://teen.smokefree.gov))~~ https://teen.smokefree.gov.

(iii) A subscriber may contact the PEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber will incur a premium surcharge in addition to the subscriber's monthly premium, if an enrolled spouse or state registered domestic partner elected not to enroll in another employer-based group medical ((that has premiums)) where the spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the Uniform Medical Plan (UMP) ((Classic's premiums and benefits with)) Classic and the benefits have an actuarial value of at least ninety-five percent of the actuarial value of the UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under ~~((his or her))~~ their PEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in PEBB medical or during the annual open enrollment as described in WAC 182-12-262 (1)(a) or (b). A subscriber must complete the required form to enroll ~~((his or her))~~ their spouse or state registered domestic partner. The subscriber must include ~~((his or her))~~ their attestation on that form. The employee must submit the ~~((attestation to his or her))~~ form to their employing agency. Any other subscriber must submit ~~((an attestation))~~ the form to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as PEBB medical begins;

(ii) When a special open enrollment ~~((SOE))~~ event occurs as described in WAC 182-12-262 (1)(c). A subscriber must submit the required form to enroll a spouse or state registered domestic partner in PEBB medical. The subscriber must include ~~((his or her updated))~~ their attestation on that form. An employee must submit ~~((an updated attestation to his or her))~~ the form to their employing agency. Any other subscriber must submit ~~((an updated attestation))~~ the form to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the ~~((first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the surcharge begins on that day))~~ same date as PEBB medical begins;

(iii) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;
- Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through ~~((his or her))~~ their employer-based group medical was more than ninety-five percent of the ~~((UMP Classic's premiums))~~ additional cost an employee would be required to

pay to enroll a spouse or state registered domestic partner in the UMP Classic; or

- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less than ninety-five percent of the actuarial value of the UMP Classic's ((actuarial value)) benefits.

A subscriber must update ((his or her)) their attestation on the required form. An employee must submit ((an updated attestation to his or her)) the form to their employing agency. Any other subscriber must submit ((an updated attestation)) the form to the PEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year; and

(iv) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must update their attestation on the required form. An employee must submit ((an updated attestation to his or her)) the form to their employing agency ((within)) no later than sixty days ((of when)) after the spouse's or state registered domestic partner's employer-based group medical status changes. Any other subscriber must submit ((an updated attestation)) the form to the PEBB program no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes.

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

**Exceptions:**

- (1) A subscriber enrolled in both medicare Parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.
- (2) An employee who waives PEBB medical according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to ((his or her)) their account as long as the employee remains in waived status.
- (3) An employee who covers ((his or her)) their spouse or state registered domestic partner who has waived ((his or her)) their own PEBB medical must attest, but a premium surcharge will not be applied.
- (4) A subscriber who covers ((his or her)) their spouse or state registered domestic partner who elected not to enroll in a TRICARE plan must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?** (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (4) of this section.

(a) Failure to timely notify an employee of ((his or her)) their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and ((his or her)) their dependents in PEBB insurance coverage as elected by the employee, if the elections were timely;

(c) Failure to enroll PEBB insurance coverage as described in WAC 182-08-197 (1)(b); ((or))

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account; or

(e) Enrolling an employee or their dependents in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved.

The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection ((4)) (2) of this section, reconcile premium payments and applicable premium surcharges as described in subsection ((2)) (3) of this section, and provide recourse as described in subsection ((3)) (4) of this section.

**Note:** If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period of thirty-one days. Employees who do not return the required enrollment forms by the due date required under the new enrollment period must be defaulted according to WAC 182-08-197 (1)(b). This notice requirement does not remove the ability to offer recourse.

**(2) Enrollment or termination.**

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection ((3)) (4) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance begins on that date;

(c) Optional life and optional LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to

enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional life and optional LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance during the period of leave, optional LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional life insurance and optional LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in ~~((an))~~ a medical FSA or DCAP as elected, the ~~((employee may adjust his or her election. The))~~ employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB insurance coverage will be terminated prospectively effective as of the last day of the month.

### (3) Premium payments.

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, and basic LTD from the date PEBB insurance coverage begins as described in subsections ~~((4))~~ (2) and ~~((3))~~ (4)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of ~~((his or her))~~ their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional LTD insurance vendor is responsible for premium refunds for the most recent twenty-four months of coverage.

The employing agency is responsible for additional months of premium refunds.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

### (4) Recourse.

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection ~~((4))~~ (2) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB insurance coverage within the following parameters:

(i) Retroactive enrollment in a PEBB health plan;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid for by the employee or dependent medical and dental premiums;

(iv) Other legal remedy received or offered; or

(v) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-196 What happens if my health plan becomes unavailable due to a change in contracted service area or eligibility for medicare?** (1) Subscribers must select a new health plan within sixty days of their chosen health plan becoming unavailable due to a change in contracting service area or the subscriber or subscriber's dependent ceasing to be eligible for their current plan because of ~~((his or her))~~ their enrollment in medicare.

(a) Employees must submit the required form to their employing agency electing their new health plan.

(b) All other subscribers must submit the required form to notify the PEBB program electing their new health plan.

(c) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received.

(2) The PEBB program will change health plan enrollment as follows if the subscriber fails to select a new health plan as required under subsection (1) of this section:

(a) Employees who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or an existing plan designated by the director.

(b) All other subscribers who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or a plan designated by the director.

(3) Any subscriber enrolled in a health plan as described in subsection (2) of this section may not change health plans except as allowed in WAC 182-08-198.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete required forms?** An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating ~~((his or her))~~ their enrollment elections, including an election to waive PEBB medical if the employee is eligible to waive PEBB medical and elects to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency. Forms must be received by ~~((his or her))~~ their employing agency no later than thirty-one days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in optional life and optional LTD insurance over the guaranteed issue at any time during the calendar year by submitting the required form to the contracted vendor for approval.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to ~~((his or her))~~ their state agency. The form must be received by ~~((his or her))~~ their state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required form to ~~((his or her))~~ their state agency. The form must be received by the state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or contracted vendor in the case of life insurance, does not receive the employee's required forms indicating medical, dental, life insurance, and LTD insurance elections, and the employee's tobacco use status attestation within thirty-one days of the employee becoming eligible, ~~((his or her))~~ their

enrollment will be as follows for those elections not received within thirty-one days:

- (i) Uniform Medical Plan Classic;
- (ii) Uniform Dental Plan;
- (iii) Basic life insurance;
- (iv) Basic long-term disability insurance;
- (v) Dependents will not be enrolled; and
- (vi) A tobacco use surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee loses and later regains eligibility for the employer contribution toward PEBB insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2). PEBB medical and dental begins on the first day of the month the employee is in pay status eight or more hours:

(a) The employee must complete the required forms indicating ~~((his or her))~~ their enrollment elections, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, or life insurance contracted vendor, if required, no later than thirty-one days after the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life PEBB insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability effective the first day of the month in which the employee is in pay status eight or more hours;

(ii) An employee who was eligible to continue optional life ~~((under continuation coverage))~~ but discontinued that PEBB insurance coverage must submit evidence of insurability to the contracted vendor if ~~((he or she))~~ they choose ~~((s))~~ to reenroll when ~~((he or she))~~ they regain ~~((s))~~ eligibility for the employer contribution;

(iii) An employee who was eligible to continue optional LTD ~~((under continuation coverage))~~ insurance but discontinued that PEBB insurance coverage must submit evidence of insurability for optional LTD insurance to the contracted vendor when ~~((he or she))~~ they regain ~~((s))~~ eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return a form indicating optional LTD insurance elections. ~~((His or her))~~ Their optional LTD insurance will be automatically reinstated effective the first day of the month ~~((he or she is))~~ they are in pay status eight or more hours:

(i) The employee continued to self-pay for ~~((his or her))~~ their optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the

required forms within thirty-one days of the employee regaining eligibility, medical, dental, life insurance, tobacco use surcharge, and LTD insurance enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required form to ~~((his or her))~~ the contracted vendor or their state agency. The ~~((form must be received by the))~~ contracted vendor or employee's state agency must receive the form no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is ~~((less than))~~ thirty days ((and) or less and within the current plan year. The employee ~~((notifies))~~ must notify their new state agency of the transfer by providing the new state ((agency and the DCAP or the medical FSA contracted vendor of his or her employment transfer within the current plan year)) agency's personnel, payroll, or benefits office the required form no later than thirty-one days after the employee's first day of work with the new state agency.

(5) An employee's PEBB insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB insurance coverage for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB insurance coverage elections also remain the same when an employee has a break in employment that does not interrupt ~~((his or her))~~ their employer contribution toward PEBB insurance coverage.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-198 When may a subscriber change health plans?** Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the public employees benefits board (PEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change ~~((his or her))~~ their health plan. An employee submits the enrollment forms to ~~((his or her))~~ their employing agency. All other subscribers submit the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may ~~((change))~~ revoke their health plan(s) election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment

must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than sixty days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to ~~((his or her))~~ their employing agency. All other subscribers submit the enrollment forms to the PEBB program. Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

**Exception:** When a subscriber or their dependent is enrolled in a medicare advantage plan, the new health plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

- (a) Subscriber acquires a new dependent due to:
  - (i) Marriage or registering a domestic partnership;
  - (ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
  - (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.
- (b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);
- (c) Subscriber has a change in employment status that affects the subscriber's eligibility for ~~((his or her))~~ their employer contribution toward ~~((his or her))~~ their employer-based group health plan;
- (d) The subscriber's dependent has a change in ~~((his or her))~~ their own employment status that affects ~~((his or her))~~ their eligibility for the employer contribution under ~~((his or her))~~ their employer-based group health plan;

**Exception:** For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan;

(f) A court order ~~((or national medical support notice (see also WAC 182-12-263)))~~ requires the subscriber or any other individual to provide insurance coverage for an eligible

dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(i) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1). A subscriber has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(j) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a health plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-199** When may an employee enroll (~~in~~ or ~~change his or her~~), or revoke an election and make a

new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)? An employee who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116 may enroll (~~(in or change his or her)~~), or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may elect to enroll in or (~~(waive his or her)~~) opt out of participation under the state's premium payment plan during the annual open enrollment by submitting the required form to their employing agency. An eligible employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment (~~(. For the state's premium payment plan, the required form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit the required form to his or her employing agency or the applicable contracted vendor~~)) by submitting the required forms to their employing agency or applicable contracted vendor. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

**Note:** Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect both will only be enrolled in the CDHP with a HSA.

(3) **During a special open enrollment:** An employee who is eligible to participate in the salary reduction plan may enroll or (~~(change his or her)~~) revoke their election and make a new election under the state's premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required form (~~(s as instructed on the forms. The)~~) to their employing agency. The employing agency must receive the required form (s must be received) and evidence of the event that created the special open enrollment no later than sixty days after the event occurs. (~~(The employee must provide evidence of the event that created the special open enrollment.)~~)

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** An employee may enroll or (~~(change his or her election under)~~) revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the

event. The enrollment or (~~change in~~) election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee has a change in employment status that affects the employee's eligibility for (~~his or her~~) their employer contribution toward (~~his or her~~) their employer-based group health plan;

(v) The employee's dependent has a change in (~~his or her~~) their own employment status that affects (~~his or her~~) their eligibility for the employer contribution under (~~his or her~~) their employer-based group health plan;

**Exception:** For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(vii) Employee or an employee's dependent has a change in residence that affects health plan availability;

(viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(ix) A court order (~~or national medical support notice (see also WAC 182-12-263))~~) requires the employee or any other individual to provide insurance coverage for an eligible

dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(xii) Employee or an employee's dependent becomes entitled to coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;

(xiii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiv) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change (~~his or her~~) their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or
- Transplant within the last twelve months; or
- Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or
- Recent major surgery still within the postoperative period of up to eight weeks; or
- Third trimester of pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical flexible spending arrangement (FSA).** An employee may enroll or (~~change his or her~~) revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or (~~change in~~) new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth,

adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA;

(v) A court order (~~or national medical support notice~~) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or (~~change his or her~~) revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or (~~change in~~) new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

**WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment or for faculty employed by more than one institution of higher education?** Employing agencies responsible for paying the employer contribution:

(1) **For eligible employees changing agencies:** When an eligible employee's employment relationship terminates with an employing agency at any time (~~before the end of~~) during the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the (~~payment of the~~) employer contribution for that employee for that month. The receiving agency is (~~not~~) liable for any employer contribution for (~~that~~) the eligible employee (~~until~~) beginning the first day of the month following the transfer.

(2) **For eligible faculty employed by more than one institution of higher education:**

(a) When a faculty is eligible for the employer contribution during an anticipated work period (quarter, semester or instructional year), under WAC 182-12-131(3), one institution will pay the entire cost of the employer contribution if the employee is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions during the anticipated work period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending

the total premium payment to the health care authority (HCA).

(b) When a faculty is eligible for the employer contribution during the summer or off-quarter/semester, under WAC 182-12-131 (3)(c), one institution will pay the entire cost of the employer contribution if the employee is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions throughout the instructional year or equivalent nine-month period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

(c) When a faculty is eligible through two-year averaging under WAC 182-12-131 (3)(d) for the employer contribution, one institution will pay the entire cost of the employer contribution if the employee is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes to coverage based on its percentage of the employee's total work at all institutions throughout the preceding two academic years. This division of the employer contribution begins the summer quarter or semester following the second academic year and continues through that academic year or until eligibility under two-year averaging ceases.

**Note:** "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters, in that order.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-08-235 Employer group and charter school application process.** This section applies to employer groups as defined in WAC 182-08-015 and to charter schools. An employer group or charter school may apply to obtain public employees benefits board (PEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups and charter schools with less than five hundred employees must apply at least sixty days before the requested coverage effective date. Employer groups and charter schools with five hundred or more employees but with less than five thousand employees must apply at least ninety days before the requested effective date.

Employer groups and charter schools with five thousand or more employees must apply at least one hundred twenty days before the requested coverage effective date. To apply, employer groups and charter schools must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) School districts, educational service districts, and charter schools are required to provide the documents described in subsections (2)(a) through (c) of this section;

**Exception:** School districts and educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than five thousand employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with five thousand or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) Employer group or charter school tax ID number (TIN); and

(iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages. School districts and educational service districts must purchase medical, dental, life, and ~~(LTD)~~ long-term disability insurance.

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(ii) Age;

(iii) Gender;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for twenty-four months by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Summary of historical plan costs; and

(iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e)(i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

- A letter from their carrier indicating they will not or cannot provide claims data.

- Provide information about the health plan most employees are enrolled in by completing the actuarial calculator authorized by the PEBB program.

- Current premiums for the health plan.

~~((Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.))~~

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

**Exception:** If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-08-240 How will the health care authority (HCA) decide to approve or deny a group application?**

This section ~~((only))~~ applies to ~~((employee organizations representing state civil service employees and the Washington health benefit exchange, regardless of the number of employees))~~ counties, municipalities, political subdivisions, and tribal governments with five thousand or more employees. This section also applies to employee organizations representing state civil service employees and the Washington health benefit exchange, regardless of the number of employees. Group applications for participation in public employees benefits board (PEBB) insurance coverage provided through the PEBB program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the group and the employer group evaluation (EGE) criteria described in this rule.

(1) Groups are evaluated as a single unit. To support this requirement the group must provide a census file, as described in WAC 182-08-235 (2)(d), and additional information as described in WAC 182-08-235 (2)(g) for all employees eligible to participate under the group's current health plan. If the group's application is for both employees and retirees, the census file data and additional information for retired employees participating under the group's current health plan must also be included.

(a) If the group's application is only for participation of its employees, the PEBB enrollment data used to evaluate the group will be state agency employee data.

(b) If a group's application is for participation of both its employees and retirees, the PEBB enrollment data used to evaluate the group will include data from the PEBB non-medicare risk pool limited to state retiree enrollment data and state agency employee data.

(2) A group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the application can be approved. For purposes of this section a single unit includes all employees eligible under the group's current health plan. If the application is only for a bargaining unit, then the bargaining unit must be evaluated using the EGE criteria in addition to all eligible employees of the group as a single unit. If the group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the group may only participate if all eligible employees of the entity participate.

(3) The authority will use the following criteria to evaluate the group.

(a) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as described in subsection (1) of this section;

(b) One of the following two conditions must be met:

(i) The frequency of large claims must be less than or equal to the PEBB historical benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section;

(ii) The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section.

(c) Provide an executive summary of benefits;

(d) Provide a summary of benefits and certificate of coverage;

(e) Provide a summary of historical plan costs; and

(f) The evaluation of criteria in (c), (d), and (e) of this subsection must indicate that the historical cost of benefits for the group is equal to or less than the historical cost of the PEBB like population within the nonmedicare population as described in subsection (1) of this section for a comparable plan design.

(4) An approved group application is valid for three hundred sixty-five calendar days after the date the application is approved by the authority. If a group applies to add additional bargaining units after the three hundred sixty-five calendar day period has ended, the group must be reevaluated.

(5) An entity whose group application is denied may appeal the authority's decision to the PEBB appeals (~~committee~~) unit through the process described in WAC (~~182-16-038~~) 182-16-2060.

(6) An entity whose group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-08-245.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-109 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, or enroll or waive enrollment in PEBB medical. Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance

program (DCAP)(~~(-)~~) or the medical flexible spending arrangement (FSA)(~~(-or)~~). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays and Sundays.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of (~~PEBB~~) health plan coverage available to enrollees after a qualifying event occurs as administered under (~~the XXII of the Public Health Service (PHS) Act,~~) the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or PEBB insurance coverage extended by the public employee benefits board under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan (~~authorized in chapter 41.05 RCW~~) under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not

include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described under WAC 182-12-114 and 182-12-131 (~~and the employee's eligible dependents as described in WAC 182-12-260~~).

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group or charter school for employees eligible in WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; (~~charter school; or~~) and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" for eligible employees includes basic life insurance and accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as optional life insurance and optional AD&D insurance offered to and paid for by employees for themselves and their dependent. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"LTD insurance" or "long-term disability insurance" includes any basic long-term disability insurance paid for by the employing agency and any supplemental long-term disability insurance offered to and paid by employees (~~(on an optional basis)~~).

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan (~~(authorized in chapter 41.05 RCW)~~) under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

~~("PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.)~~

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171 and 182-12-180), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in (~~(his or her)~~) their employer-based group medical when:

- (~~(Premiums are)~~) The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the Uniform Medical Plan (UMP) Classic (premiums); and

- The benefits have an actuarial value of (~~(benefits is)~~) at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby (~~(state and)~~) public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program (DCAP), medical flexible spending arrangement (FSA), or premium payment plan (~~(as authorized in chapter 41.05 RCW)~~) offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Season" means any recurring annual period of work at a specific time of year that lasts three to eleven consecutive months.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in PEBB medical. Employees eligible to participate in the salary reductions plan may enroll in or (~~(change)~~) revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, state agency, or charter school and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an

agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical, TRICARE plans, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains another employer-based group health plan as allowed under WAC 182-12-136.

**AMENDATORY SECTION** (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-12-113 What are the obligations of a state agency in the application of employee eligibility?** (1) All state agencies must carry out all actions, policies, and guidance issued by the public employees benefits board (PEBB) program necessary for the operation of benefit plans, education of employees, claims administration, and appeals process including those described in chapters 182-08, 182-12, and 182-16 WAC. State agencies must:

(a) Use the methods provided by the PEBB program to determine eligibility and enrollment in benefits, unless otherwise approved in writing;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the PEBB program or otherwise as approved in writing by the PEBB program; and

(c) Carry out corrective action and pay any penalties imposed by the authority and established by the board when the state agency's eligibility determinations fail to comply with the criteria under these rules.

(2) All state agencies must determine employee eligibility for PEBB benefits and employer contribution according to the criteria in WAC 182-12-114 and 182-12-131. State agencies must:

(a) Notify newly hired employees of PEBB rules and guidance for eligibility and appeal rights;

(b) Provide written notice to faculty who are potentially eligible for benefits and employer contribution of their potential eligibility as described in WAC 182-12-114(3) and 182-12-131;

(c) Inform an employee in writing whether or not (~~he or she is~~) they are eligible for benefits upon employment. The written communication must include a description of any hours that are excluded in determining eligibility and information about the employee's right to appeal eligibility and enrollment decisions;

(d) Routinely monitor all employees' eligible work hours to establish eligibility and maintain the employer contribution toward PEBB insurance coverage;

(e) Make eligibility determinations based on the criteria of the eligibility category that most closely describes the employee's work circumstances per the PEBB program's direction;

(f) Identify when a previously ineligible employee becomes eligible or a previously eligible employee loses eligibility; and

(g) Inform an employee in writing whether or not (~~he or she is~~) they are eligible for benefits and the employer contribution whenever there is a change in work patterns such that

the employee's eligibility status changes. At the same time, state agencies must inform employees of the right to appeal eligibility and enrollment decisions.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits?** Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the public employees benefits board (PEBB) program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward PEBB insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if (~~he or she is~~) they are anticipated to work an average of at least eighty hours per month and (~~is~~) are anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic long-term disability (LTD) insurance begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(2) **Seasonal employees**, as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if ~~((he or she is))~~ they are anticipated to work an average of at least eighty hours per month and ~~((s))~~ are anticipated to work for at least eight hours in each month of at least three consecutive months of the season.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that ~~((he or she))~~ they will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic ~~((long-term disability))~~ LTD insurance begin on the first day of the month following the day the employee becomes eligible. If the employee

becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which ~~((he or she is))~~ they are anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify ~~((his or her))~~ their employing agencies that ~~((he or she))~~ they work~~(s)~~ at more than one institution and may be eligible through stacking.

(c) **When PEBB insurance coverage begins.**

(i) Medical, dental, basic life insurance, and basic ~~((long-term disability))~~ LTD insurance begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, basic life insurance, and basic ~~((long-term disability))~~ LTD insurance begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then PEBB insurance coverage begins at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date ~~((his or her))~~ their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date

their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic ~~((long-term disability))~~ LTD insurance begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB insurance coverage begins.** Medical, dental, basic life insurance, and basic ~~((long-term disability))~~ LTD insurance begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-12-123 Is dual enrollment prohibited?** Public employees benefits board (PEBB) health plan coverage is limited to a single enrollment per individual.

(1) An individual who has more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the health plan of ~~((his or her))~~ their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in a PEBB health plan who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128 ~~((+(a)))~~.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in ~~((his or her))~~ their spouse's, state registered domestic partner's, or parent's PEBB health plan as a dependent. If the employee's spouse, state registered domestic partner, or parent does not remove the employee (who is enrolled as a dependent) from ~~((his or her))~~ their subscriber account, the PEBB program will terminate the employee's enrollment as a dependent the last day of the month before the employee's employer-paid coverage begins.

**Exception:** An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB coverage for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(b) If the employee elects to waive ~~((his or her))~~ their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under ~~((his or her))~~ their spouse's, state registered domestic partner's, or parent's PEBB health plan as a dependent.

(4) A child who is eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(5) When an employee is eligible for the employer contribution towards PEBB insurance coverage due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

**Exception:** Faculty who seek to establish or maintain eligibility as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency ~~((he or she chose))~~ they may choose to enroll ~~((under))~~ as described in (a) of this subsection, the employee must notify ~~((his or her))~~ their other employing agency no later than sixty days from the date PEBB coverage ends through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's PEBB insurance coverage elections remain the same when an employee transfers enrollment from enrollment under one employing agency to another employing agency without a break in PEBB insurance coverage for one month or more, as described in (b) of this subsection.

(6) A retiree who defers enrollment in a PEBB health plan as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state school district, a Washington state ~~((education))~~ educational service district, or a Washington state charter school and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC ~~((182-12-174))~~ 182-12-200 or defer enrollment as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may ~~((he or she))~~ they enroll in PEBB medical after having waived enrollment?** An employee may waive enrollment in public employees benefits board (PEBB) medical if ~~((he or she is))~~ they are enrolled in other employer-based group medical, a TRICARE plan, or medicare. An employee who waives enrollment in PEBB medical must enroll in dental, basic life insurance, and basic long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages).

(1) To waive enrollment in PEBB medical, the employee must submit the required form to ~~((his or her))~~ their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee enrolled in other employer-based group medical, a TRI-CARE plan, or medicare may waive PEBB medical when ~~((he or she))~~ they become~~((s))~~ eligible for PEBB benefits. The employee must indicate ~~((his or her))~~ their election to

waive enrollment in PEBB medical on the required form and submit the form to ~~((his or her))~~ their employing agency. The ~~((form must be received by the))~~ employing agency must receive the form no later than thirty-one days after the date the employee becomes eligible (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment as described in subsection (4) of this section.

The employee must submit the required form to ~~((his or her))~~ their employing agency. The employing agency must receive the form ~~((must be received))~~ no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to ~~((change his or her enrollment))~~ revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to ~~((his or her))~~ their employing agency. The employing agency must receive the form ~~((must be received))~~ no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will begin as follows:

(i) For a newly born child, PEBB medical will begin the date of birth;

(ii) For a newly adopted child, PEBB medical will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

(iii) For an employee enrolling in order to enroll a newly born or newly adopted child, PEBB medical will begin the first day of the month in which the event occurs;

(iv) For the spouse or state registered domestic partner of an employee, PEBB medical will begin the first day of the month in which the event occurs.

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering for a state domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee has a change in employment status that affects the employee's eligibility for ~~((his or her))~~ their employer contribution toward ~~((his or her))~~ their employer-based group medical;

(d) The employee's dependent has a change in ~~((his or her))~~ their own employment status that affects ~~((his or her))~~ their eligibility for the employer contribution under ~~((his or her))~~ their employer-based group medical;

**Exception:** For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(g) A court order ~~((or national medical support notice (see also WAC 182-12-263)))~~ requires the employee or any other individual to provide a health plan for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff?** This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as described in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain (~~his or her~~) their eligibility for the employer contribution toward public employees benefits board (PEBB) insurance coverage for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

- Be hired into a position with a state agency within twenty-four months of the original eligible position ending; and
- Upon hire, notify the employing state agency that (~~he or she is~~) they are potentially eligible to use this section.

This section ceases to apply if the employee is employed in a position eligible for PEBB benefits under WAC 182-12-114 within twenty-four months of leaving the original position.

After the twenty-fourth month, the employee must reestablish eligibility as described in WAC 182-12-114.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) insurance coverage?** The employer contribution toward public employees benefits board (PEBB) insurance coverage begins on the day that PEBB benefits begin as described in WAC 182-12-114. This section describes under what circumstances employees maintain eligibility for the employer contribution toward PEBB insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, employees who have established eligibility for benefits as described in WAC 182-12-114 are eligible for the employer contribution each month in which they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) Benefits-eligible seasonal employees (eligible as described in WAC 182-12-114(2)) who work a season of less than nine months are eligible for the employer contribution in any month of the season in which they are in pay status eight or more hours during that month. The employer contribution toward PEBB insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) Benefits-eligible seasonal employees (eligible as described in WAC 182-12-114(2)) who work a season of nine months or more are eligible for the employer contribution:

(i) In any month of the season in which they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked, but the eligibility may not exceed a total of twelve consecutive calendar months for the combined season and off season.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work half time or more the entire instructional year or equivalent nine-month period (eligible as described in WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible as described in WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which employees work half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester PEBB insurance coverage.

**Exception:**

Eligibility for the employer contribution toward summer or off-quarter/semester PEBB insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution toward PEBB insurance coverage. "Academic year" means summer, fall,

winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of ~~((his or her))~~ their potential eligibility to ~~((his or her))~~ their employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

- (i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and
- (ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible as described in WAC 182-12-114 (3)(a) and (b)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

**(4) Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

- (i) Employees on authorized leave without pay;
- (ii) Employees on approved educational leave;
- (iii) Employees receiving time-loss benefits under workers' compensation;
- (iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or
- (v) Employees applying for disability retirement.

**(5) Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward PEBB insurance coverage as described in WAC 182-12-129.

**(6) Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which employees are not in pay status for at least eight hours, employees:

- (a) Lose eligibility for the employer contribution for that month; and
- (b) Must reestablish eligibility for PEBB benefits as described in WAC 182-12-114 in order to be eligible for the employer contribution again.

**(7) The employer contribution toward PEBB insurance coverage ends** in any one of these circumstances for all employees:

(a) When employees fail to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

- (i) On the date specified in an employee's letter of resignation; or
- (ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When employees move to a position that is not anticipated to be eligible for PEBB benefits as described in WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB benefits cease for employees and their enrolled dependents the last day of the month in which employees are eligible for the employer contribution under this section.

**Exception:** If the employing agency deducted the employee's premium for PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB insurance coverage ends the last day of the month for which employee premiums were deducted.

**(8) Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward PEBB insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the premium and applicable premium surcharge set by the health care authority (HCA). These options are available as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff?** Employees who have established eligibility for public employees benefits board (PEBB) benefits as described in WAC 182-12-114 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) Employees who are no longer eligible for the employer contribution toward PEBB insurance coverage due to an event described in (b)(i) through (vi) of this subsection may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

- (a) Employees may continue any combination of medical, dental, and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may

continue either basic or both basic and optional long-term disability (LTD) insurance.

(b) Employees in the following circumstances qualify to continue coverage under this subsection:

- (i) Employees who are on authorized leave without pay;
- (ii) Employees who are on approved educational leave;
- (iii) Employees who are receiving time-loss benefits under workers' compensation;
- (iv) Employees who are called to active duty in the uniformed services as defined under USERRA;
- (v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; or
- (vi) Employees who are applying for disability retirement.

(c) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the ~~((HCA))~~ PEBB program, whichever is later.

(d) Employees may self-pay for a maximum of twenty-nine months. The employee's first premium payment and applicable premium surcharge is due ~~to the HCA~~ no later than forty-five days after the ~~((employee's election is received by the HCA))~~ election period ends as described in (c) of this subsection.

Premiums and applicable premium surcharges associated with continuing PEBB medical, must be made to the HCA as well as premiums associated with continuing PEBB dental or LTD insurance coverage. Premiums associated with continuing life insurance coverage must be made to the contracted vendor. Following the employee's first premium payment, the employee must pay the premium amounts for PEBB insurance coverage and applicable premium surcharges as premiums become due.

(e) If the employee's monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(2) The number of months that employees self-pay the premium while eligible as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, or both for the remaining difference in months by self-paying the premium and applicable premium surcharge as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA)?** (1) An employee on approved leave under the federal Family and Medical Leave Act (FMLA)

may continue to receive the employer contribution toward public employees benefits board (PEBB) insurance coverage in accordance with the federal FMLA. The employee may also continue current optional life and optional long-term disability (LTD) insurance. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave.

(2) If an employee's monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid.

(3) If an employee exhausts the period of leave approved under FMLA, PEBB insurance coverage may be continued by self-paying the premium and applicable premium surcharge set by the HCA, with no contribution from the employer, as described in WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-141 If an employee reverts from an eligible position, what happens to ~~((his or her))~~ their public employees benefits board (PEBB) insurance coverage?**

(1) If an employee reverts for reasons other than a layoff and is not eligible for the employer contribution toward public employees benefits board (PEBB) insurance coverage under this chapter, ~~((he or she))~~ they may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA) for up to eighteen months under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1):

(a) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the ~~((HCA))~~ PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the ~~((employee's election is received by the HCA))~~ election period ends as described in (a) of this subsection. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(2) If an employee is reverted due to a layoff, the employee may be eligible for the employer contribution toward PEBB insurance coverage under the criteria of WAC 182-12-129. If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the premium and applicable premium surcharge set by the HCA under WAC 182-12-133.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility?** (1) **Faculty** may continue any combination of medical, dental, and life insurance by self-paying the premium and applicable premium surcharge set by the health care authority (HCA), with no contribution from the employer, for a maximum of twelve months between periods of eligibility:

(a) The employee's election must be received by the public employees benefits board (PEBB) program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the ~~((HCA))~~ PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the ~~((employee's election is received by the HCA))~~ election period ends as described in (a) of this subsection. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(2) **Benefits-eligible seasonal employees** may continue any combination of medical, dental, and life insurance by self-paying the premium and applicable premium surcharge set by the HCA, with no contribution from the employer, for a maximum of twelve months between periods of eligibility:

(a) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the ~~((HCA))~~ PEBB program, whichever is later;

(b) The employee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the ~~((employee's election is received by the HCA))~~ election period ends as described in (a) of this subsection. Premiums and applicable premium surcharges associ-

ated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental. Premiums associated with continuing life insurance coverage must be made to the contracted vendor;

(c) Following the employee's first premium payment, the employee must pay the premium amounts associated with PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(d) If the employee's monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(3) **COBRA**. An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical ~~((and))~~, dental, or both for the remaining difference in months by self-paying the premium and applicable premium surcharge set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-146 When is an enrollee eligible to continue public employee's benefits board (PEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA)?** (1) An enrollee may continue public employee's benefits board (PEBB) health plan coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) by self-paying the premium and applicable premium surcharge set by the health care authority (HCA):

**Note:** Based on RCW 26.60.015 and public employee benefits board policy resolution that extended PEBB coverage for dependents not otherwise eligible for COBRA, an employee's state registered domestic partner and the state registered domestic partner's children may continue PEBB insurance coverage on the same terms and conditions as spouses and other eligible dependents under COBRA.

(a) The enrollee's election must be received by the PEBB program no later than sixty days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the ~~((HCA))~~ PEBB program, whichever is later;

(b) The enrollee's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the ~~((enrollee's election is received by the HCA))~~ election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)~~((b))~~ (c);

(c) Enrollees who request to voluntarily terminate their COBRA coverage must do so in writing. The written termination request must be received by the PEBB program. Enrollees who terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility. COBRA coverage will end on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month; and

(d) Medical flexible spending arrangement (FSA) enrollees who on the date of the qualifying event, have a greater number of remaining benefits than remaining contribution payments for the current year, will have an opportunity to continue making contributions to their medical FSA by electing COBRA. The enrollee's first premium payment is due to the contracted vendor no later than forty-five days after the ~~((enrollee's election is received by the contracted vendor))~~ election period ends as described below. The enrollee's election must be received by the contracted vendor no later than sixty days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later.

(2) An employee or an employee's dependent who loses eligibility for the employer contribution toward PEBB insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(3) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(4) A retired employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts, educational service districts, and charter schools ceases participation in PEBB insurance coverage may continue medical, dental, or both.

(5) A retired employee, or a dependent of a retired employee, who is no longer eligible to continue coverage as described in WAC 182-12-171 may continue medical, dental, or both.

(6) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

A blind vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal?** (1) Employees awaiting hearing of a dismissal action before any of the following may continue their public employees benefits board (PEBB) insurance coverage by self-paying the premium and applicable premium surcharge set by the health care authority (HCA), with no contribution

from the employer, on the same terms as an employee who is granted leave as described in WAC 182-12-133:

(a) The personnel resources board;

(b) An arbitrator; or

(c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) The employee must pay premium amounts and applicable premium surcharges associated with PEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharge remains unpaid for sixty days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(3) If the dismissal is upheld, all PEBB insurance coverage will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue medical ~~((and))~~, dental, or both for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid PEBB insurance coverage retroactively, the employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(a) HCA will refund to the employee any premiums and applicable premium surcharges the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the PEBB insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums and applicable premium surcharges self-paid by the employee during the appeal period.

(b) All optional life and optional ~~((long-term disability))~~ LTD insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-171 When is a retiring employee eligible to enroll in public employees benefits board (PEBB)**

**retiree insurance coverage?** A retiring employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if ~~((he or she))~~ they meet ~~((s))~~ procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected ~~((state official or))~~ and full-time appointed ~~((state))~~ official of the legislative ~~((or))~~ and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in ~~(a), (b), and (c))~~ through (d) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than sixty days after the employee's employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

(b) The employee's first premium payment and applicable premium surcharge is due to the health care authority (HCA) no later than forty-five days after the ((employee's election is received by the HCA)) election period ends as described in (a) of this subsection. Following the employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)~~((b))~~ (c); and

(c) If a retiring employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee;

**Exception:**

If a retiring employee selects a medicare supplement plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a retiring employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in a PEBB health plan, the employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

**(2) Substantive eligibility requirements.**

(a) An employee as defined in WAC 182-12-109 who is eligible for PEBB benefits or an employee who is enrolled in basic benefits through a Washington state school district, educational service district as defined in RCW 28A.400.270, or a charter school and ends public employment after becoming vested in a Washington state-sponsored retirement plan may enroll or defer enrollment in PEBB retiree insurance coverage if ~~((he or she))~~ they meet ~~((s))~~ procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a ~~((lump sum))~~ lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011~~((24))~~ (25)), must meet ~~((his or her))~~ their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage~~((s))~~.

(c) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet ~~((his or her))~~ their HERP plan's retirement eligibility criteria, or be at least age fifty-five with ten years of state service;

(d) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (i) or (ii) of this subsection to be eligible to continue PEBB insurance coverage as a retiree, except for a school district, educational service district, or charter school employee who must meet the requirements as described in subsection (2)~~(e)~~ of this section.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if ~~((he or she was))~~ they were a member of public employees retirement system Plan 1 or Plan 2 during ~~((his or her))~~ their employment with that employer group or tribal government.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in subsection (2)~~(b)~~(i) and (ii) of this section.

(iii) A retired employee of an employer group, except a Washington state school district, educational service district, or charter school that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if ~~((he or she))~~ they enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(e) A retiring employee of a Washington state school district, Washington state educational service district, or a Washington state charter school must immediately begin to

receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who ends employment before October 1, 1993; or

(ii) A retiring employee who receives a ~~((lump sum))~~ lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the employee enrolled before 1995; or

(iii) A retiring employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011~~((2+))~~ (25)), must meet ~~((his or her))~~ their Plan 3 retirement eligibility criteria; or

(iv) An employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if ~~((he or she))~~ they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) A retiring employee and ~~((his or her))~~ their enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, ~~((he or she))~~ they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree ~~((insurance coverage))~~ health plan. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

(4) Washington state-sponsored retirement plans include:

- (a) Higher education retirement plans;
  - (b) Law enforcement officers' and firefighters' retirement system;
  - (c) Public employees' retirement system;
  - (d) Public safety employees' retirement system;
  - (e) School employees' retirement system;
  - (f) State judges/judicial retirement system;
  - (g) Teachers' retirement system; and
  - (h) State patrol retirement system.
- (i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB insurance coverage at the time of retirement.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-180** ~~When is an elected ((state official)) and full-time appointed ((state)) official of the legislative ((or)) and executive branch of state government, or their survivor eligible to continue enrollment in public employ-~~

**ees benefits board (PEBB) retiree insurance coverage?** ~~((The following officials are))~~ An elected and full-time appointed official of the legislative and executive branch of state government is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage under the same terms as an outgoing legislator((s)), when they voluntarily or involuntarily leave public office((s)). The following officials are eligible if they meet the procedural requirements as described in subsection (3) of this section:

- (a) A member of the state legislature;
- (b) A statewide elected official of the executive branch;
- (c) An executive official appointed directly by the governor as the single head of an executive branch agency; or
- (d) An official appointed directly by a state legislative committee as the single head of a legislative branch agency or an official appointed to secretary of the senate or chief clerk of the house of representatives.

(2) The spouse, state registered domestic partner, or child of an official described in subsection (1) of this section who loses eligibility due to the death of the official may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage as described in (a) and (b) of this subsection and must meet procedural requirements as described in subsection (3)~~((b) and (c))~~ of this section.

(a) The official's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The official's child may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(3) **Procedural requirements.** An official described in subsection (1) of this section or their survivor described in subsection (2) of this section must enroll or defer enrollment in PEBB retiree insurance coverage ~~((no later than sixty days after the official leaves public office or the death of the official))~~ as described in (a) through (d) of this subsection:

(a) For an official to enroll in PEBB retiree insurance coverage the required forms must be received by the PEBB program no later than sixty days after the official leaves public office ~~((or the death of the official))~~. The effective date of PEBB retiree insurance coverage is the first day of the month after the official leaves public office ~~((or the death of the official))~~;

For a survivor to enroll in PEBB retiree insurance coverage, the required forms must be received by the PEBB program no later than sixty days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the date of the official's death or the first day of the month after the survivor's PEBB insurance coverage ends;

(b) The official's or survivor's first premium payment and applicable premium surcharge is due to the health care authority (HCA) no later than forty-five days after the official's or survivor's ~~((election is received by the PEBB program))~~ election period ends as described in (a) of this subsection. Following the official's or survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)~~((b))~~ (c);

(c) If an official or a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the official or survivor:

**Exception:** If an official or a survivor selects a medicare supplement plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If an official or a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in a PEBB health plan the official or the survivor must meet deferral enrollment requirements as described in WAC 182-12-200 or 182-12-205.

(4) If the official, an enrolled dependent, or their survivor is entitled to medicare or becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, ((he or she)) they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree ((insurance coverage)) health plan. If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

(5) An official described in subsection (1) of this section shall be included in the term "retiree" or "retiring employee" as used in chapters 182-08, 182-12, and 182-16 WAC.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-200 ((How does a retiree who is)) May a retiring employee or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state school district, a Washington state educational service district, or a Washington state charter school defer PEBB health plan enrollment under PEBB retiree insurance coverage? (1) A ((retiree)) retiring employee may defer enrollment in a public employees benefits board (PEBB) health plan ((during the period of time he or she is)) at retirement or after enrolling in PEBB retiree insurance coverage. Enrollment in a PEBB health plan may be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB, a Washington state school district, a Washington state ((education)) educational service district, or a Washington state charter school, including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage. A retiring employee who defers enrollment at retirement must meet substantive eligibility requirements as described in WAC 182-12-171(2) or requirements as described in WAC 182-12-180(1).

(2) A retiree who defers enrollment in medical must defer enrollment in dental. Retirees must be enrolled in medical to enroll in dental. A retiree who defers enrollment in a PEBB health plan also defers enrollment for all eligible dependents.

(3) A retiree who defers ((coverage)) enrollment may later enroll in a PEBB health plan if ((he or she)) they provide((s)) evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state school district, a

Washington state educational service district, or a Washington state charter school and submits the required form as described in (a) and (b) of this subsection:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state school district, a Washington state educational service district, or a Washington state charter school ends, or such coverage under COBRA or continuation coverage ends. ((The retiree must submit the required form to enroll or defer enrollment as described in WAC 182-12-171-((1)(a)).)) The required forms to enroll must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

(4) If a retiree elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

**Exception:** If a retiree selects a medicare supplement plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

AMENDATORY SECTION (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

WAC 182-12-205 May a retiree((s)) or a survivor defer or voluntarily terminate public employees benefits board (PEBB) health plan enrollment under ((public employees benefits board (PEBB))) PEBB retiree insurance coverage ((at or after retirement))? (1) The following ((provisions apply when retirees defer or voluntarily terminate enrollment under)) individuals may defer enrollment in a public employees benefits board (PEBB) ((retiree insurance coverage when enrolled in other coverage)) health plan:

((1) Retirees) (a) A retiring employee;

(b) A dependent becoming eligible as a survivor; or

(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in a PEBB health plan also defers enrollment for all eligible dependents, except as described in subsection ((2)) (3)(c) of this section.

((2) Retirees may) (3) A subscriber described in subsection (1) of this section who defers enrollment in a PEBB health plan ((at or after retirement if continuously enrolled)) must maintain continuous enrollment in other medical as described in this section or WAC 182-12-200. ((Retirees who)) A subscriber who defers enrollment in medical must defer enrollment in dental. ((Retirees)) A subscriber must be enrolled in medical to enroll in dental.

(a) Beginning January 1, 2001, ((retirees may defer)) enrollment in a PEBB health plan ((if they are)) may be deferred when the subscriber is enrolled in employer-based

group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, ~~((retirees may defer))~~ enrollment in a PEBB health plan ~~((if they are))~~ may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, ~~((retirees may defer))~~ enrollment in a PEBB health plan ~~((if they are))~~ may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter. ~~((The retiree's))~~ Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, ~~((retirees))~~ subscribers who are not eligible for Parts A and B of medicare may defer enrollment in a PEBB health plan ~~((if they are))~~ when the subscriber is enrolled in exchange coverage.

~~((3))~~ (e) Beginning July 17, 2018, enrollment in a PEBB health plan may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer PEBB health plan enrollment, ~~((retiring employees or enrolled subscribers must submit))~~ the required forms must be submitted to the PEBB program.

(a) ~~((If))~~ For a retiring employee ~~((s submit the required forms to defer enrollment in a PEBB health plan after their employer paid coverage, COBRA coverage, or continuation coverage ends))~~ who meets the substantive eligibility requirements as described in WAC 182-12-171 ~~((1)(b))~~ (2), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) ~~((If enrolled subscribers))~~ For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than sixty days after the official leaves public office.

(c) For an employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than sixty days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's death or the date the survivor's PEBB insurance coverage, school district coverage,

educational service district coverage, or charter school coverage ends. The forms must be received by the PEBB program no later than sixty days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage, school district coverage, educational service district coverage, or charter school coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than sixty days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than sixty days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than one hundred eighty days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in a PEBB health plan, enrollment will be deferred effective the first of the month following the date the required forms ~~((is))~~ are received by the PEBB program. If the forms ~~((is))~~ are received on the first day of the month, ~~((coverage will end on the last day of the previous month.~~

~~((4) Retirees who defer enrollment while enrolled in coverage as described in subsection (2)(a) through (d) of this section and lose such coverage must enroll in a PEBB retiree health plan as described in WAC 182-12-171 or defer enrollment as described in this section or WAC 182-12-200))~~ enrollment will be deferred effective that day.

**Exception:** When a subscriber or their dependent is enrolled in a medicare advantage plan, then enrollment in a PEBB health plan will be deferred effective the first of the month following the date the medicare advantage plan disenrollment form is received.

(5) A retiree ~~((s))~~ who meets substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to ~~((submit))~~ have submitted the deferral form at that time, but must ~~((have met))~~ meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) ~~((Retirees who defer))~~ A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan ~~((as follows))~~ by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying

coverages as described in subsection (3)(a) through (e) of this section:

(a) ~~((Retirees))~~ A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment ~~((in such coverage))~~ to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after ~~((such))~~ coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

(b) ~~((Retirees))~~ A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment ~~((in such coverage))~~ to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after ~~((such))~~ coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

(c) ~~((Retirees))~~ A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment ~~((in such coverage))~~ to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after ~~((such))~~ coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of

the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the ~~((retiree's))~~ medicaid coverage ends.

(d) ~~((Retirees))~~ A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment ~~((in such coverage))~~ to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after ~~((such))~~ coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(e) ~~((Retirees))~~ A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

(f) A subscriber who defers enrollment may enroll in a PEBB health plan if ~~((the retiree))~~ they receive~~((s))~~ formal notice that the authority has determined it is more cost-effective to enroll ~~((the retiree or the retiree's))~~ them or their eligible dependents in PEBB medical than a medical assistance program.

(g) If a subscriber elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

**Exception:**

If a subscriber selects a medicare supplement plan, non-medicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(7) ~~((Retirees))~~ An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in a PEBB ~~((retiree insurance coverage))~~ health plan must do so in writing. The written termination request must be received by the PEBB program. A retiree~~((s))~~ or a survivor who voluntarily terminates their enrollment in a PEBB ~~((retiree insurance coverage))~~ health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB ~~((insurance coverage))~~

health plan will ~~((end))~~ terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment in a PEBB ~~((insurance coverage))~~ health plan will ~~((end))~~ terminate on the last day of the previous month.

**Exception:** When a ~~((member))~~ subscriber or their dependent is enrolled in a medicare advantage plan, then enrollment in a PEBB ~~((insurance coverage will end))~~ health plan will terminate on the last day of the month when the medicare advantage plan disenrollment form is received.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-207** **When can a retiree or an eligible dependent's public employees benefits board (PEBB) insurance coverage be ~~((canceled))~~ terminated by the health care authority (HCA)?** A retiree or an eligible dependent's public employees benefits board (PEBB) insurance coverage can be terminated by the health care authority (HCA) for the following reasons:

(1) Failure to comply with the PEBB program's procedural requirements, including failure to provide information or documentation requested by the due date in written requests from the PEBB program;

(2) Knowingly providing false information;

(3) Failure to pay the monthly premium or applicable premium surcharge when due as described in WAC 182-08-180 ~~(1)((b))~~ (c);

(4) Misconduct. If a retiree's PEBB insurance coverage is terminated for misconduct, PEBB insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium; or

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing PEBB insurance coverage on behalf of the HCA, its employees, or other persons.

If a retiree's PEBB insurance coverage is terminated by HCA for the above reasons, PEBB insurance coverage for all of the retiree's eligible dependents is also terminated.

**AMENDATORY SECTION** (Amending WSR 16-20-080, filed 10/4/16, effective 1/1/17)

**WAC 182-12-208** **What are the requirements regarding enrollment in dental under public employees benefits board (PEBB) retiree insurance coverage?** The following provisions apply to a subscriber and ~~((his or her))~~ their dependents enrolled under public employees benefits board (PEBB) retiree insurance coverage:

(1) A subscriber ~~((and his or her dependents))~~ enrolling in dental must meet procedural and eligibility requirements ~~((as described in WAC 182-12-171(1) and 182-12-262) and eligibility requirements (as described in WAC 182-12-171(2) and 182-12-260)))~~ under one of the following: WAC 182-12-171, 182-12-180, 182-12-200, 182-12-205, 182-12-211, 182-

12-250, 182-12-262, or 182-12-265. The subscriber's dependents must meet eligibility criteria as described in WAC 182-12-250 or 182-12-260.

(2) A subscriber and ~~((his or her))~~ their dependents must be enrolled in medical to enroll in dental. If a subscriber elects to enroll dependents in PEBB dental coverage, the dependents must be enrolled in the same PEBB dental plan as the subscriber.

(3) A subscriber enrolling in dental must stay enrolled for at least two years before dental can be dropped unless ~~((he or she))~~ they defer~~((s))~~ or terminate medical and dental coverage as described in WAC 182-12-200 or 182-12-205, or drops dental as described in subsection (4) of this section.

(4) A subscriber enrolled in PEBB dental who becomes eligible for, and enrolls in, employer-based group dental as an employee or the dependent of an employee, or such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), or continuation coverage may drop PEBB dental, before completing the two-year enrollment requirement. Coverage will end on the last day of the month in which the required form is received by the PEBB program. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(a) A subscriber may enroll, terminate, or change their election in PEBB dental during the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. The change in PEBB dental begins January 1st of the following year.

(b) A subscriber may enroll in PEBB dental after ~~((his or her))~~ their employer-based group dental or such coverage under COBRA coverage or continuation coverage ends. The required form must be received by the PEBB program no later than sixty days after such coverage ends. PEBB dental begins the first day of the month after the employer-based group dental coverage or continuation coverage under COBRA ends.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-209** **Who is eligible for retiree term life insurance?** Eligible employees who participate in public employees benefits board (PEBB) life insurance as an employee and meet qualifications for PEBB retiree insurance coverage as provided in WAC 182-12-171 or 182-12-180 are eligible for ~~((PEBB))~~ retiree term life insurance. They must submit the required forms to the PEBB program. Forms for a retiring employee as described in WAC 182-12-171, must be received by the PEBB program no later than sixty days after the date their PEBB employee life insurance ends. Forms for an official leaving public office as described in WAC 182-12-180, must be received by the PEBB program no later than sixty days after the official leaves public office.

(1) Employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends.

(2) Retirees may not defer enrollment in retiree term life insurance, except as allowed in subsection (3)(b) of this section.

(3) If a retiree returns to active employment status and becomes eligible for the employer contribution toward PEBB employee life insurance, ~~((he or she))~~ they may choose:

(a) To continue to self-pay premiums and keep retiree term life insurance, the employee must pay retiree term life insurance premiums directly to the contracted vendor during the period ~~((he or she is))~~ they are eligible for PEBB employee life insurance; or

(b) To stop self-paying retiree term life insurance premiums during the period ~~((he or she is))~~ they are eligible for PEBB employee life insurance and reelect retiree term life insurance when ~~((he or she is))~~ they are no longer eligible for the employer contribution toward PEBB employee life insurance.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-211 May an employee who is determined to be retroactively eligible for disability retirement enroll in public employees benefits board (PEBB) retiree insurance coverage?** (1) An employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee submits the required form and a copy of the formal determination letter ~~((he or she))~~ they received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's form and a copy of ~~((his or her))~~ their Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than sixty days after the date on the determination letter; and

(c) The employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under ~~((his or her))~~ their higher education retirement plan (HERP), with exceptions described ~~((in))~~ below from WAC 182-12-171(2)~~((a))~~;

(i) A retiring employee of a state agency, Washington state school district, Washington state educational service district, Washington state charter school, or an employer group participating under a Washington state sponsored retirement plan, who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee of a state agency, Washington state school district, Washington state educational service district, Washington state charter school, or an employer group participating under a Washington state sponsored retirement plan, who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011 (25)), must meet their Plan 3 retirement eligibility criteria.

The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage; or

(iii) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age fifty-five with ten years of state service.

(2) Premiums and applicable premium surcharges are due from the effective date of enrollment in PEBB retiree insurance coverage. The employee, at ~~((his or her))~~ their option, must indicate the effective date of PEBB retiree insurance coverage on the form. The employee may choose from the following dates:

(a) The employee's retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

(3) The director may make an exception to the date PEBB retiree insurance coverage begins; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

(4) If a retiring employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee.

**Exception:**

If a retiring employee selects a medicare supplement plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a retiring employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty.** Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW ~~((26.26.104))~~ 26.26A.-100.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both Parts A and B of medicare.

(5) The survivor (or agent acting on ~~((his or her))~~ their behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that ~~((he or she is))~~ they are determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in PEBB retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and applicable premium surcharges must be paid by the survivor as described in WAC 182-08-180 ~~(1)((b))~~ (c) except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled for at least two years before dental can be dropped, unless they defer medical and dental coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in ~~((other))~~ qualifying coverage as described in WAC 182-12-205~~((2))~~ (3).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205~~((4))~~ (6) when they lose other coverage. Survivors must provide evidence that they were continuously enrolled in ~~((other such coverage))~~ one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) when enrolling in a PEBB health plan. The required form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during the annual open enrollment. In addition to the annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other qualifying coverage during the deferral period, as described in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-260 Who are eligible dependents?** To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and will request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program reserves the right to review a dependent's eligibility at any time. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, when ~~((his or her))~~ their dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date ~~((his or her))~~ their dependent is no longer eligible under this section. See

WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from PEBB insurance coverage.

The following are eligible as dependents:

(1) ~~((Lawful))~~ Legal spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) State registered domestic partner. State registered domestic partner as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090. Former state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible through the last day of the month in which their twenty-sixth birthday occurred except as described in ~~((+))~~ (h) of this subsection. Children are defined as the subscriber's:

(a) Children based on establishment of a parent-child relationship as described in RCW ~~((26.26.10+))~~ 26.26A.100, except when parental rights have been terminated;

~~(b) ((Biological children, where parental rights have not been terminated;~~

~~(e) Stepchildren.))~~ Children of the subscriber's spouse, based on the spouse's establishment of a parent-child relationship, except when parental rights have been terminated. The stepchild's relationship to a subscriber (and eligibility as a ~~((PEBB))~~ dependent) ends ~~(, for purposes of this rule,))~~ on the same date the marriage with the spouse ends through divorce, annulment, dissolution, termination, or death;

~~((d) Legally adopted))~~ (c) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of the child;

~~((e))~~ (d) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

~~((f))~~ (e) Children of the subscriber's state registered domestic partner, based on the state registered domestic partner's establishment of a parent-child relationship, except when parental rights have been terminated. The child's relationship to the subscriber (and eligibility as a ~~((PEBB))~~ dependent) ends ~~(, for purposes of this rule,))~~ on the same date the subscriber's legal relationship with the state registered domestic partner ~~((as defined in RCW 26.60.020(1))~~ ends through divorce, annulment, dissolution, termination, or death;

~~((g))~~ (f) Children specified in a court order or divorce decree for whom the subscriber has a legal obligation to provide support or health care coverage;

~~((h))~~ (g) Extended dependent(s) in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. ("Children") Extended dependent child does not include a foster (children for whom support payments are made to the subscriber through the state department of social and health services foster care program) child unless the subscriber, the subscriber's spouse, or the subscriber's state registered

domestic partner has assumed a legal obligation for total or partial support in anticipation of adoption; and

~~((+))~~ (h) Children of any age with a developmental (disability) or physical (handicap) disability that renders the child incapable of self-sustaining employment and chiefly dependent upon the subscriber for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide ~~((evidene))~~ proof of the disability (and evidence that the condition occurred before) and dependency within sixty days of the child's attainment of age twenty-six;

(ii) The subscriber must agree to notify the PEBB program, in writing, (when his or her dependent is not eligible under this section. The notification must be received by the PEBB program)) no later than sixty days after the date that ~~((a))~~ the child (age twenty-six or older) is no longer (qualifies) eligible under this subsection;

(iii) A child with a developmental ~~((disability))~~ or physical ~~((handicap))~~ disability who becomes self-supporting is not eligible under this subsection as of the last day of the month in which ~~((he or she))~~ they become ~~((s))~~ capable of self-support;

(iv) A child with a developmental ~~((disability))~~ or physical ~~((handicap))~~ disability age twenty-six and older who becomes capable of self-support does not regain eligibility under (i) of this subsection if ~~((he or she))~~ they later become ~~((s))~~ incapable of self-support;

(v) The PEBB program with input from the applicable contracted vendor will periodically ~~((certify))~~ verify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday, which may require renewed proof from the subscriber.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their PEBB insurance coverage.

AMENDATORY SECTION (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in public employees benefits board (PEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll ~~((his or her))~~ their dependent except as provided in WAC 182-12-205 ~~((2))~~ (3)(c). Subscribers must satisfy the enrollment requirements as described in subsection (4) of this

section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) benefits. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date, except if the employee enrolls a newborn child in optional dependent life insurance. The newborn child's dependent life insurance coverage will be effective on the date the child becomes fourteen days old.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. ~~((The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.))~~

**(2) Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of the last day of the month the dependent loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

**(b) Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

**(c) Retirees, survivors, and enrollees with PEBB continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their PEBB insurance coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. ~~((Unless otherwise approved by the PEBB program,))~~ The dependent will be removed from the subscriber's PEBB insurance coverage prospectively. PEBB insurance coverage will end on the last day of the month in which the written notice is received by the PEBB program. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

**(3) Special open enrollment.**

(a) Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) Health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) Enrollment of an extended dependent or a dependent with a disability will be the first day of the month following eligibility certification.

(iii) The dependent will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end as follows:

- For the newly born child, health plan coverage will begin the date of birth;

- For a newly adopted child, health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

- For a spouse or state registered domestic partner of a subscriber, health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from health plan coverage the last day of the month in which the event occurred;

A newly born child must be at least fourteen days old before optional dependent life insurance coverage purchased by the employee becomes effective.

Any one of the following events may create a special open enrollment:

(b) Subscriber acquires a new dependent due to:

(i) Marriage or registering for a state domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(c) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(d) Subscriber has a change in employment status that affects the subscriber's eligibility for ~~((his or her))~~ their employer contribution toward ~~((his or her))~~ their employer-based group health plan;

(e) The subscriber's dependent has a change in ~~((his or her))~~ their own employment status that affects ~~((his or her))~~ their eligibility for the employer contribution under ~~((his or her))~~ their employer-based group health plan;

**Exception:** For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(f) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(g) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(h) A court order (~~(or national medical support notice (see also WAC 182-12-263))~~) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(i) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(j) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

**(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll (~~(his or her)~~) their eligible dependents when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting the required form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required form must be received no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the required forms must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f). To recertify an enrolled child with a disability, the required forms must be received by the PEBB program or contracted vendor by the child's scheduled PEBB coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, required forms must be received no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

**WAC 182-12-263 National Medical Support Notice (NMSN).** When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll (~~(his or her)~~) their dependent child and request changes to (~~(his or her)~~) their health plan coverage as described under subsection (3) of this section. Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the public employees benefits board (PEBB) program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or

(b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(b) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN;

(d) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN.

(e) If the subscriber is eligible for and elects COBRA or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(4) Changes to health plan coverage or enrollment as described in subsection (3)(a) through (c) of this section will begin the first day of the month following receipt of the NMSN. If the NMSN is received on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in subsection (3)(d) of this section the last day of the month the NMSN is

received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(5) The subscriber may be eligible to make changes to ~~((his or her))~~ their health plan enrollment and salary reduction elections ~~((during a special open enrollment))~~ related to the NMSN as described in WAC 182-08-198(2), 182-08-199(3), 182-12-128(4), or 182-12-262(3).

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-265 What options for continuing health plan enrollment are available to ~~((widows, widowers and dependent children))~~ a surviving spouse, state registered domestic partner, or child, if the employee or retiree dies?** The ~~((dependent))~~ survivor of an eligible employee or retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage. ~~((An eligible survivor must submit the required forms to enroll or defer enrollment in PEBB retiree insurance coverage. The forms must be received by the PEBB program no later than sixty days after the date of the employee's or retiree's death. The dependent's))~~ If enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharge is due to the health care authority (HCA) no later than forty-five days after the ((dependent's election is received by the HCA)) election period ends as described in subsection (1), (2), or (3) of this section. Following the ~~((dependent's))~~ survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)~~((b))~~ (c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than one hundred twenty days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

**Notes:** If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, ~~((the dependent is))~~ they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, ~~((the dependent))~~ they may continue health plan enrollment as described in WAC 182-12-146.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends unless the employer group is a school district, educational service district, or charter school.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected ~~((or))~~ and full-time appointed official of the legislative ~~((or))~~ and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the retiree's death.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the ~~((dependent))~~ survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. ~~((The dependent must submit the required form(s) to enroll or defer PEBB health plan enrollment.))~~ The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the ~~((dependent))~~ survivor must provide evidence of continuous enrollment in medical coverage from the most recent open enrollment for which the ~~((dependent))~~ survivor was not enrolled in a PEBB medical plan prior to the retiree's death.

**Note:** Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends unless the employer group is a school district, educational service district, or charter school.

(3) The spouse, state registered domestic partner, or child of a deceased school district, educational service district, or a charter school employee is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the employee's death provided the employee died on or after October 1, 1993. The ~~((dependent))~~ survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW ~~((and submit the required form to enroll or defer enrollment in PEBB retiree insurance coverage.))~~ The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the later of the date of the employee's death or the date the survivor's school district coverage, educational service district coverage, or charter school coverage ends.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(4) If a premium and applicable premium surcharge received by the ~~((authority))~~ HCA is sufficient as described in WAC 182-08-180 (1)~~((e))~~ (d)(ii) to maintain PEBB health plan enrollment after the employee's or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the ~~((dependent's))~~ survivor's enrollment ended due to the death of the employee or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharge.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

**Exception:** If a survivor selects a medicare supplement plan, non-medicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(6) In order to avoid duplication of group medical coverage, ~~((surviving dependents))~~ a survivor may defer enrollment in a PEBB health plan as described in WAC 182-12-200 and 182-12-205.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260?** If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the premiums and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The dependent's first premium payment and applicable premium surcharge is due to the HCA no later than forty-five days after the ~~((dependent's election is received by the HCA))~~ election period ends as described in WAC 182-12-146, 182-12-180, 182-12-250, or 182-12-265, whichever applies. Following the employee's first premium payment, the dependent must pay premium and applicable premium surcharge amounts associated with PEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharge remain unpaid for sixty days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharge was paid as described in WAC 182-08-180 (1)~~((b))~~ (c). The ~~((public employees benefits board (PEBB)))~~ PEBB program must receive the required forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, state registered domestic partners, or children who lose eligibility due to the death of an employee or

retiree may be eligible to continue health plan enrollment as described in WAC 182-12-180, 182-12-250, or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

**Exception:** A dependent who loses eligibility because a state registered domestic partnership is dissolved may continue health plan enrollment under PEBB continuation coverage for a maximum of thirty-six months.

**Note:** Based on RCW 26.60.015 and public employees benefits board policy resolution that extended PEBB coverage for dependents not otherwise eligible for COBRA, an employee's state registered domestic partner and the state registered partner's children may continue PEBB insurance coverage on the same terms and conditions as spouses and other eligible dependents under COBRA.

No ~~((PEBB))~~ continuation coverage will be offered unless the PEBB program is notified through hand-delivery or United States Postal Service mail of the qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

**AMENDATORY SECTION** (Amending WSR 17-19-077, filed 9/15/17, effective 1/1/18)

**WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements.** The public employees benefits board (PEBB) annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare Parts A and B, and in the medicare risk pool, are eligible to participate in the PEBB wellness incentive program.

(2) Effective January 1, 2016, to receive the PEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the latest date below:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January, February, March, April, May, or June the deadline is September 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in July or August, the deadline is one hundred twenty days from the subscriber's PEBB medical effective date; or

(c) For subscribers enrolling in PEBB medical with an effective date in September, October, November, or December, the deadline is December 31st.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

**Note:** All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The PEBB program will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) Effective January 1, 2018, an eligible subscriber will receive a separate PEBB wellness incentive for completing the SmartHealth well-being assessment on or before December 31st, of the current plan year. An eligible subscriber may only earn this separate PEBB wellness incentive once per plan year. Once earned, subscribers must claim the incentive on or before December 31st of the same calendar year it was earned.

(5) PEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible for the PEBB wellness incentive program in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.