

WSR 05-20-018
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed September 26, 2005, 4:04 p.m., effective October 27, 2005]

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

Purpose: WAC 458-20-165 explains the application of excise taxes to laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services. Rule 165 explains that charges for coin-operated and self-service laundry facilities are a retail sale and subject to the retailing business and occupation (B&O) tax and retail sales tax. Chapter 514, Laws of 2005, excludes such charges from the definition of a retail sale. Thus, charges for coin-operated and self-service laundry facilities are not subject to retail sales tax and income derived from such charges is subject to the service and other activities B&O tax.

The department is adopting revisions to Rule 165 to reflect this legislative change.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.

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

Adopted under notice filed as WSR 05-15-084 on July 15, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 26, 2005.

Janis P. Bianchi, Manager
 Interpretations and Technical Advice Unit

AMENDATORY SECTION (Amending WSR 02-23-034, filed 11/13/02, effective 12/14/02)

WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services. (1) **Introduction.** This ~~(rule)~~ section discusses the application of the business and occupation (B&O), retail sales, and use taxes to laundries, dry cleaners, laundry pickup and delivery services, self-service laundries and dry cleaners, and linen and uniform supply services. It also discusses the tax treatment of laundry services provided to non-profit health care facilities and income received from coin-operated laundry facilities.

Chapter 514, Laws of 2005, changed the tax reporting responsibilities of persons operating self-service or coin-operated laundry facilities. Refer to subsection (6) of this section for further information.

(2) **What is a laundry or dry cleaning service?** A "laundry or dry cleaning service" is the activity of laundering, cleaning, dyeing, and pressing of articles such as clothing, linens, bedding, towels, curtains, drapes, and rugs. It also includes incidental mending or repairing. The term applies to services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning services. It also includes pickup and delivery laundry services performed by persons operating in their independent capacity and not as agent for another laundry or dry cleaning service.

(a) **Sales of laundry or dry cleaning services.** The gross proceeds of sale and selling price of laundry or dry cleaning services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010. The retailing B&O and retail sales taxes also apply to sales of soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property to consumers.

The wholesaling B&O tax applies to the gross proceeds of sale from laundry or dry cleaning services performed for persons reselling these services. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

(b) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale for laundry and dry cleaning services is the place the laundering or dry cleaning is performed. RCW 82.14.020(4) and 82.04.050. For example, a laundry or dry cleaning service located in Washington must collect sales tax from an Oregon resident who brings clothing items to the business for laundering or dry cleaning. In addition, the gross proceeds are subject to the retailing B&O tax. Even though the customer resides in Oregon, both taxes apply because the laundering or dry cleaning occurs in Washington.

(i) **Seller hiring third-party to perform services.** A customer may purchase laundry or dry cleaning services from a seller who hires another person to perform the actual cleaning activity. In such cases, the customer will drop off and pick up the clothing or other articles to be cleaned at the seller's business location. The place of sale with respect to this sale is the seller's location where the customer drops off and picks up the articles.

(ii) **Seller using agent for pickup and delivery.** If a person providing laundry or dry cleaning services uses an agent such as a hotel or a driver for pickup and delivery of the articles to be cleaned, the place of sale is the seller's location where the cleaning is performed.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a purchase at wholesale. Such purchases are not subject to retail

sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles cleaned; and

(ii) Soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property that are not used in performing a laundry or dry cleaning services but are resold as tangible personal property.

(d) **Purchases subject to retail sales or use tax.** A laundry or dry cleaning business that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a laundry or dry cleaning service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture;

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery; and

(iv) Items given to customers without charge.

(3) What are linen and uniform supply services?

"Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and/or similar items whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. RCW 82.08.0202. It also means the supply of diapers and bedding. "Linen and uniform supply services" includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

A person providing linen and uniform supply services performs a number of different activities, often at multiple locations. Many of these activities are the same types of activities performed by a person providing laundry or dry cleaning services, such as: Laundering, dry cleaning, pressing, incidental mending, and/or pickup and delivery. Additional activities not generally performed by a person providing laundry or dry cleaning services may include: Providing linen and uniform items customized by application of the customer's business name, company logo, employee names, etc.; measuring and/or issuing uniforms to the customer's employees; repairing or replacing worn or damaged linen and uniform items; and/or performing various administrative functions for the customer, such as inventory control.

(a) **Sales of linen and uniform supply services.** The gross proceeds of sale and selling price from linen and uniform supply services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010.

(b) **Place of sale.** Effective July 1, 2001, for the purposes of determining a seller of linen and uniform supply services' responsibility to remit B&O tax and to collect and remit retail sales tax, the place of sale is the place of delivery to the customer. For periods before July 1, 2001, the place of sale was the location at which the laundering activity was performed.

For assistance with determining appropriate local sales and use tax rates, the department's geographic information system (GIS) provides a mapping and address lookup system. The system is available on the department's internet site at: <http://dor.wa.gov>.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a wholesale sale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Linen, uniforms, towels, cabinets, hand soap, and similar property rented or supplied to customers as a part of the laundry and linen supply service; and

(ii) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles being cleaned.

(d) **Purchases subject to retail sales or use tax.** A linen or uniform supply service that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a linen or uniform supply service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture; and

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery.

(4) **Customer's responsibility to remit use tax.** Effective July 1, 2002, chapter 367, Laws of 2002, imposes the use tax on certain retail services acquired by consumers without payment of the retail sales tax. Such services include installing, repairing, cleaning, altering, imprinting, or improving tangible personal property. Thus, a consumer must report and pay use tax directly to the department when a seller of laundry or dry cleaning services or linen and uniform supply services fails to collect the retail sales tax.

For example, a person with a restaurant location in Vancouver and another in Portland, Oregon, contracts with an Oregon business for linen and uniform supply services. Each week, the linen and uniform supply service delivers clean linens and uniforms and picks up soiled items for both locations at the person's Portland location. The person's Vancouver location turns in soiled uniforms and linens and receives its supply of clean items at the person's Portland location. The person is responsible for reporting and paying use tax on the

value of the linen and uniform supply services used by its Vancouver location. For further discussion about use tax, refer to WAC 458-20-178.

(5) **Laundry agents collecting and distributing laundry.** Persons who collect and/or distribute laundered or dry cleaned items as an agent for a provider of laundry services, dry cleaning services, or linen and uniform supply services are liable for the service and other activities B&O tax on their gross commissions. See WAC 458-20-159 for the record-keeping requirements for showing agency status. The person providing the laundry service, dry cleaning services, or linen and uniform supply service must collect and remit to the department retail sales tax on the total charge made to the customer (see subsections (2) and (3) of this ~~((rule))~~ section).

(6) **Self-service and coin-operated laundry facilities.** Effective July 1, 2005, the definition of "retail sale" excludes charges made for the use of self-service or coin-operated laundry facilities. Chapter 514, Laws of 2005. Thus, gross income received from charges for the use of ~~((self-service or coin-operated laundry))~~ such facilities ~~((are))~~ is subject to the ~~((retailing B&O and retail sales taxes, except as discussed below. Likewise sales of soap, bleach, fabric softener and other supplies to consumers are subject to the retailing B&O tax and retail sales tax. For most sales, the law requires a seller to separately state the retail sales tax from the selling price. However, the law allows a seller to deduct the tax from the total amount received in coin-operated machines to arrive at the net amount that becomes the measure of the tax. RCW 82.08.050 and 82.08.080))~~ service and other activities B&O tax. Retail sales tax does not apply to these charges.

(a) ~~((Coin-operated laundry facilities for the exclusive use of tenants. Effective))~~ **Tax reporting responsibilities for periods before July 1, 2005.** Between July 1, 1998, and July 1, 2005, the taxability of self-service and coin-operated laundry facilities was subject to various changes.

(i) Before July 1, 2005, the definition of "retail sale" included charges made for the use of self-service or coin-operated laundry facilities, except as explained below in (a)(ii) of this subsection. For reporting periods occurring before July 1, 2005, gross income derived from charges for the use of these facilities was subject to the retailing B&O tax. In addition, such charges were subject to the retail sales tax.

(ii) Between July 1, 1998, and June 30, 2005, the definition of ~~((a))~~ "retail sale" ~~((excludes))~~ excluded charges for the use of coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks when the facilities ~~((are))~~ were provided for the exclusive use of tenants. RCW 82.04.050 (2)(a). As a result, charges for the use of these facilities ~~((are))~~ were not subject to the retailing B&O tax or the retail sales tax. However, the gross proceeds of sale received from these facilities ~~((is))~~ were subject to the service and other activities B&O tax. Before July 1, 1998, these charges were retail sales and subject to the retailing B&O tax and retail sales tax.

Charges for the use of coin-operated laundry facilities in hotels, motels, trailer camps, and other locations providing lodging or camping facilities to transients ~~((remain))~~ remained subject to the retailing B&O and retail sales taxes. Persons providing transient lodging should refer to WAC

458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, trailer camps, etc.) in effect during that time.

(b) **Sales of tangible personal property.** Sales of soap, bleach, fabric softener and other supplies to consumers are subject to the retailing B&O tax and retail sales tax. For most sales, the law requires a seller to separately state the retail sales tax from the selling price. However, the law allows a seller making sales of tangible personal property to a consumer from a vending machine to deduct the tax from the total amount received to arrive at the net amount that becomes the measure of the tax. RCW 82.08.050 and 82.08.-080.

(c) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale ~~((with respect to charges for the use of a self-service or coin-operated laundry facility))~~ is the location of the facility.

~~((e))~~ (d) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property is a purchase at wholesale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates). Thus, purchases of soap, bleach, fabric softener and other supplies for resale to customers separate from charges for the use of the laundry facilities are wholesale purchases.

~~((d))~~ (e) **Purchases subject to retail sales or use tax.** A self-service or coin-operated laundry facility that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a self-service or coin-operated laundry facility that are subject to retail sales tax or use tax:

- (i) Washing machines, dryers, fixtures, and furniture; and
- (ii) Items given to customers without charge.

(7) **Laundry services performed for nonprofit health care facilities.** For the purpose of this ~~((rule))~~ section, "nonprofit health care facilities" means facilities operated by nonprofit organizations providing diagnostic, therapeutic, convalescent, or preventive inpatient or outpatient health care services. The term includes, but is not limited to, nonprofit hospitals, nursing homes, and hospices.

(a) **Sales of laundry services to nonprofit health care facilities.** Effective July 1, 1998, the definition of a retail sale specifically excludes sales of laundry services to nonprofit health care facilities. As a result, charges for laundry services provided to these facilities are not subject to retail sales tax or the retailing B&O tax. However, effective July 1, 1998, the gross proceeds of sale received for providing laundry services to nonprofit health care facilities is subject to the service and other activities B&O tax. For the period of July 1, 1993, through June 10, 1998, the service and other activities B&O tax applied only to sales of laundry services to members by nonprofit associations composed exclusively of nonprofit hospitals.

(b) **Purchases subject to retail sales or use tax.** Persons providing laundry services to nonprofit health care facilities are considered consumers of all items used in providing such services. RCW 82.04.190. As a result, purchases of items such as dyes, fabric softeners, linens, and uniforms are subject to the retail sales tax. The same is true for purchases of washing machines, dryers, fixtures, furniture, and other items of tangible personal property. The buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

WSR 05-20-022
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 27, 2005, 10:11 a.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: To adjust the maximum civil penalty amount for inflation, to clarify civil penalty mitigation requests, and to update the federal regulation reference date in order to remain current.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 05-16-070 on August 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: The words "receipt of" were added twice in Section 3.11(c) immediately preceding the words "a Notice and Order of Civil Penalty..." and once in Section 3.11(e) immediately preceding the words "the Notice and Order of Civil Penalty...."

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

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

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

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

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

Date Adopted: September 22, 2005.

James Nolan
Director - Compliance

AMENDATORY SECTION

REGULATION I 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 (~~(\$14,300.00)~~) \$14,686.00 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 (~~(\$14,300.00)~~) \$14,686.00 for each day of continued noncompliance.

(c) Within 30 days of the date of (~~(after)~~) 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)~~) (~~(Any such)~~) 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.

(~~(Upon receipt of the application, t)~~) 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. (~~(if the)~~) An appeal (~~(is)~~) must be filed with the Hearings Board and served on the Agency within 30 days (~~(after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt)~~) of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

~~((e))~~ (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.

~~((f))~~ (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.

~~((g))~~ (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.

~~((h))~~ (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

REGULATION I 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, ~~(2004)~~ 2005.

**WSR 05-20-023
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed September 27, 2005, 10:12 a.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: To reflect new state definitions of impaired air quality adopted by the legislature (effective July 24, 2005). The previous definitions were based on ambient concentrations of PM10; the new definitions are based on concentrations of PM2.5. Using the new definitions will allow the agency to impose indoor burning restrictions earlier in the build-up of pollution, thus decreasing the contribution from these sources to an air pollution episode.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 13.02.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 05-16-072 on August 1, 2005.

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

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

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

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

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

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

Date Adopted: September 22, 2005.

John K. Anderson
Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 13.02 GENERAL CONDITIONS FOR SOLID FUEL BURNING DEVICES

In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions for solid fuel burning devices established by the Washington State Department of Ecology:

WAC 173-433-030	Definitions. (effective 4/20/91)
WAC 173-433-110	Opacity standards. (effective 3/6/93)
WAC 173-433-120	Prohibited fuel types. (effective 4/20/91)
WAC 173-433-130	General emission standards. (effective 4/20/91)
WAC 173-433-140	Impaired air quality criteria. (effective 4/20/91) (First Stage of Impaired Air Quality has the meaning contained in RCW 70.94.473 (1)(b); <u>Second Stage of Impaired Air Quality has the meaning contained in RCW 70.94.473 (1)(c)</u>)
WAC 173-433-150	Curtailement. (effective 4/20/91)

**WSR 05-20-026
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION**

[Filed September 28, 2005, 9:01 a.m., effective October 29, 2005]

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

Purpose: WAC 139-10-550 Basic arrest, search, and seizure academy, currently, the arrest, search, and seizure week is part of the Community Corrections Officer Academy. Each iteration, multiple students attend just this portion of the academy. These students are usually transferring from corrections counselor or classification counselor positions within the institutions and have already completed a majority

of the academy. These additional students cannot be tracked with the present system and, therefore, do not show up in the commission's records as having attended and completed training in this area. This change would allow the commission to document the students' attendance and successful completion of this important aspect of community corrections officers basic training.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-15-105 on July 18, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: September 14, 2005.

Sonja Hirsch
for Cheryl Price
Accreditation Manager

NEW SECTION

WAC 139-10-550 Basic arrest, search, and seizure academy. The basic arrest, search, and seizure academy curriculum of the commission will be the second required academy for certification as a community corrections officer. The length must be at least forty instructional hours in length and will include, but not be limited to, the following subject matter areas:

- (1) Core skills
 - (a) Arrest procedures
 - (b) Search procedures
 - (c) Field safety techniques
- (2) Key skills
 - (a) Verbal deescalation
 - (b) Home assessments
- (3) Related skills
 - (a) Dealing with aggressive and resistive behavior
 - (b) Legal issues
 - (c) Evidence procedures
 - (d) Personal safety
 - (e) Security management.

WSR 05-20-027 PERMANENT RULES CRIMINAL JUSTICE TRAINING COMMISSION

[Filed September 28, 2005, 9:03 a.m., effective October 29, 2005]

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

Purpose: WAC 139-10-210 Requirement of basic corrections training, currently, the arrest, search, and seizure week is part of the Community Corrections Officer Academy. Each iteration, multiple students attend just this portion of the academy. These students are usually transferring from corrections counselor or classification counselor positions within the institutions and have already completed a majority of the academy. These additional students cannot be tracked with the present system and, therefore, do not show up in the commission's records as having attended and completed training in this area. This change would allow the commission to document the students' attendance and successful completion of this important aspect of community corrections officers basic training. Adding this block [back] into the definition will clarify that both of these academies are required for certification as a community corrections officer.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 139-10-210].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-15-106 on July 18, 2005.

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

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

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Date Adopted: September 14, 2005.

Sonja Hirsch
for Cheryl Price
Accreditation Manager

AMENDATORY SECTION (Amending WSR 04-13-071, filed 6/15/04, effective 7/16/04)

WAC 139-10-210 Requirement of basic corrections training. As provided in RCW 43.101.220, all full-time corrections employees of the state of Washington or of any city, county, or political subdivision of the state of Washington (~~shall~~) must, as a condition of continued employment, successfully complete a basic corrections academy as prescribed, sponsored, or conducted by the (~~Washington state criminal justice training~~) commission. This requirement to complete basic training (~~shall~~) must be fulfilled within the

initial six months of corrections employment unless otherwise extended or waived by the commission. Requests for extension or waiver of the basic training requirement ~~((shall))~~ must be submitted to the commission in writing as designated by its policies.

(1) Corrections personnel ~~((shall))~~ must attend basic academy training according to job function as described below:

(a) Corrections officers academy. All employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails, penal institutions, and detention facilities. Representative job classifications include, but are not limited to, custody and ~~((correctional))~~ corrections officers.

(b) Misdemeanant probation/classification academy. All employees whose primary job function is the case management of offenders under county/city supervision, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, adult probation officers, jail classification counselors, and work crew supervisors.

(c) Community corrections officers academy and basic arrest, search, and seizure academy. All employees whose primary job function is the case management in the community of adult offenders under state department of corrections supervision ~~((including))~~, to include: Monitoring adjustment of offenders involved with in/outpatient treatment programs((:)), counseling offenders and/or referring them for counseling or other resource/treatment programs((:)), and making home/field visits pursuant to offender classification standards. Representative job classifications include, but are not limited to, community corrections officers, community risk management specialists, hearings officers, and victim advocates.

(d) Institutional corrections counselors academy. All employees whose primary job function is to provide classification and program services to adult felony offenders housed in a state institutional setting: Parole planning((:)), work/training release and prerelease referrals((:)), academic/vocational/work program reviews((:)), disciplinary and living unit program reviews((:)), and risk management identification. Representative job classes include, but are not limited to, ~~((correctional))~~ corrections counselors, classification counselors, institution risk management specialists, and corrections mental health counselors.

(e) Juvenile services academy. All employees working with juveniles whose primary job function is the case management of offenders, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, juvenile probation and parole counselors, case aides/assistants, trackers, juvenile rehabilitation community counselors, juvenile drug court counselors, and community surveillance officers.

(f) Juvenile corrections officers academy. All employees responsible for the care, custody, and safety of youth in county and state juvenile custody facilities. Representative job class includes, but are not limited to, juvenile detention workers, juvenile corrections officers, and juvenile supervision officers.

(g) Juvenile residential counselors academy. All employees responsible for the case management, custody, counseling, supervision, and application of researched based treatment to youth in state institutions. Representative job classes include, but are not limited to, juvenile residential rehabilitation counselors, juvenile residential rehabilitation counselor assistants, and juvenile rehabilitation supervisors.

(h) Work release academy. All employees responsible for the safety, custody, and care of adult offenders in a work release facility. Representative job ~~((class))~~ classes include~~((s))~~, but ~~((is))~~ are not limited to, work release officers, work release counselors, and work release program monitors.

(2) It ~~((shall be))~~ is the responsibility of the employing agency to determine the most appropriate basic academy for an employee to attend within the guidelines set by the commission.

An agency may elect to ~~((forgo completely any))~~ decline basic academy training if such employee occupies a middle management or an executive position, as defined in WAC 139-10-410, 139-10-510, and 139-25-110.

(3) Failure to comply with the above requirements ~~((shall))~~ will result in a notification of noncompliance from the commission directed to the individual employee((:)) and, as appropriate, the employing agency director, chief or sheriff, ~~((the civil service commission, and/or the state auditor's office, and))~~ the chief executive of the local unit of government, and any other agency or individual determined by the commission.

(4) Each agency employing personnel covered by RCW 43.101.220 ~~((shall be))~~ is responsible for full and complete compliance with the above training requirements. Additionally, each such agency ~~((shall))~~ must provide the commission with employment information necessary for the establishment and maintenance of complete and accurate training records on all affected employees.

WSR 05-20-028

PERMANENT RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed September 28, 2005, 9:05 a.m., effective October 29, 2005]

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

Purpose: WAC 139-10-212 Physical requirements for admission to basic corrections academies, this language change is being made because the Juvenile Security Workers Academy's name was changed to the Juvenile Corrections Officers Academy in September 2004.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 139-10-212].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-15-107 on July 18, 2005.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: September 14, 2005.

Sonja Hirsch
for Cheryl Price
Accreditation Manager

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

WAC 139-10-212 Physical requirements for admission to basic corrections academies. Each successful applicant for admission to a basic corrections officers or juvenile (~~security workers~~) corrections officers academy sponsored or conducted by the (~~Washington state criminal justice training~~) commission (~~shall~~) must possess good health and physical capability to actively and fully participate in defensive tactics training and other required physical activities. In order to minimize risk of injury and maximize the benefit of such participation, each trainee in any academy session (~~shall~~) must, as a precondition of his or her academy attendance, demonstrate a requisite level of physical fitness, as established by the (~~training~~) commission.

For this purpose, each academy applicant (~~shall~~) must be evaluated in the assessment areas of aerobic capacity, strength, and flexibility, in accordance with the requirements and procedures established by the (~~Training~~) commission. Such evaluation (~~shall~~) will be based upon composite performance ratings in the overall assessment as established by the commission.

Failure to demonstrate a requisite level of fitness within the overall assessment will result in ineligibility for academy attendance and completion.

WSR 05-20-029
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 28, 2005, 9:07 a.m., effective October 29, 2005]

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

Purpose: Chapter 139-05 WAC, Law enforcement, to improve effectiveness, clarity, and intent in order to better serve clients, stakeholders, and communities.

Citation of Existing Rules Affected by this Order: Repealing 2 [WAC 139-05-820 and 139-05-930]; and amending 13 [WAC 139-05-200, 139-05-210, 139-05-220,

139-05-230, 139-05-240, 139-05-242, 139-05-250, 139-05-300, 139-05-810, 139-05-912, 139-05-915, 139-05-920, and 139-05-925].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-15-108 on July 18, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 13, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 13, Repealed 2.

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

Date Adopted: September 14, 2005.

Sonja Hirsch
for Cheryl Price
Accreditation Manager

AMENDATORY SECTION (Amending WSR 03-19-123, filed 9/17/03, effective 10/18/03)

WAC 139-05-200 Requirement of basic law enforcement training. (1) All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, except volunteers and reserve officers, whether paid or unpaid, and officers of the Washington state patrol, unless otherwise exempted by the (~~Washington state criminal justice training~~) commission (~~shall~~) must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission (~~or obtain a certificate of equivalent basic training from the commission. This requirement of~~). Basic law enforcement training (~~shall be met~~) must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.

(2) Law enforcement personnel exempted from the requirement of subsection (1) of this section (~~shall~~) include:

(a) Individuals holding the office of sheriff of any county on September 1, 1979; and

(b) (~~Auxiliary and reserve personnel; and~~

(~~e~~)) Commissioned personnel(~~(-)~~);

(i) (~~Who have been granted an administrative exemption by the commission, provided that the initial grant and continuing effect of such exemption shall be governed by the following:~~

(A) ~~No police chief or sheriff of any agency with ten or fewer commissioned officers shall be eligible to receive such exemption;~~

(B) ~~Any request for such exemption shall be submitted to the commission on an approved form with a criminal records~~

check completed by the Washington state patrol and, in any instance wherein the requestor is a police chief, such request shall be cosigned by requestor's appointing authority;

~~(C) Any individual receiving such exemption may not engage in patrol or other general enforcement activity on a usual or regular basis but shall limit such involvement to that required for supervision, agency management, or manpower replacement on an emergency or exigent basis;~~

~~(D) Any approved administrative exemption shall remain in effect for the duration of the exemptee's term of service within the position upon which such exemption is based or until the nature of exemptee's primary duties and responsibilities change from administrative to general enforcement; and~~

~~(E) Any approved administrative exemption may be revoked by the commission at any time upon its finding that the conditions of such exemption are not being met or the basis for such exemption no longer exists;~~

~~((ii))~~ Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978; or

~~((iii))~~ (ii) Who have ~~((been awarded))~~ received a certificate of completion ~~((of the basic law enforcement academy or the basic law enforcement equivalency))~~ in accordance with the requirement of subsection (1) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration.

(3) Each law enforcement agency of the state of Washington, or any political subdivision thereof, ~~((except the Washington state patrol, shall))~~ must immediately notify the commission by approved form of each instance ~~((wherein))~~ where a commissioned officer begins continuing and regular employment with that agency. ~~((Such notification shall be maintained by the commission and shall be utilized by the commission for the subsequent scheduling, notification and enrollment required for compliance with the basic law enforcement training requirement.))~~

(4) Failure to comply with any of the above requirements of basic law enforcement training ~~((shall))~~ will result in notification of noncompliance~~((;))~~ by the commission~~((, on approved form,))~~ to:

(a) The individual in noncompliance;

(b) The head of his/her agency; and

~~((The civil service commission having jurisdiction of such agency;~~

~~((d) The judges and clerks of the municipal, district, and superior courts in which said agency is located;~~

~~((e) The state auditor's office; and~~

~~((f))~~ Any other agency or individual, as determined by the commission.

NEW SECTION

WAC 139-05-205 Administrative exemption. Commissioned personnel may be granted an administrative exemption by the commission. A request for administrative exemption must be made under WAC 139-03-030. The initial grant and continuing effect of such exemption is governed by the following:

(1) No police chief or sheriff of any agency with ten or fewer commissioned officers is eligible to receive an exemption;

(2) Any request for an exemption must be submitted to the commission on an approved form with a criminal records check completed by the Washington state patrol, a current resume, and, in any instance where the requestor is a police chief, the request must be cosigned by the requestor's appointing authority;

(3) Any individual receiving an exemption may not engage in patrol or other general enforcement activity on a usual or regular basis but must limit such involvement to that required for supervision, agency management, or manpower replacement on an emergency or exigent basis;

(4) Any approved administrative exemption will remain in effect for the duration of the exemptee's term of service in the position upon which an exemption is based or until the nature of the exemptee's primary duties and responsibilities changes from administrative to general enforcement; and

(5) Any approved administrative exemption may be revoked by the commission at any time upon a finding that the conditions of an exemption are not being met or the basis for the exemption no longer exists.

AMENDATORY SECTION (Amending WSR 04-13-070, filed 6/15/04, effective 7/16/04)

WAC 139-05-210 Basic law enforcement certificate of equivalency ((certification)). (1) A certificate of completion of equivalent basic law enforcement training ~~((shall be))~~ is issued ~~((only))~~ to applicants who successfully complete the equivalency process as required by the ~~((Washington state criminal justice training))~~ commission. For this purpose, the term "process" ~~((shall))~~ includes all documentation and prerequisites set forth in subsection (6) of this section~~((;))~~ and successful completion of all knowledge and skills requirements within the ~~((basic))~~ equivalency academy. A certificate of completion of equivalent basic law enforcement training ~~((shall be))~~ is recognized in the same manner as the certificate of completion of the basic law enforcement academy.

(2) ~~((Eligibility for))~~ Participation in the ~~((basic))~~ equivalency process ~~((shall be))~~ is limited to fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, who otherwise are eligible to attend the basic law enforcement academy~~((;))~~ and who have attained ~~((basic certification through completion of))~~ commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" ~~((shall))~~ does not include any military or reserve training program~~((;))~~ or any federal training program not otherwise approved by ~~((a majority of))~~ the commission ~~((membership)).~~

(3) ~~((The participation of any eligible and approved applicant for a certificate of equivalent basic law enforcement training shall be effected within, and limited to,))~~ Applicants who are approved to participate in the equivalency academy must attend the first available session of the ~~((basic))~~ equivalency academy following such applicant's date of hire~~((; provided that no))~~. Applicants ~~((shall be))~~ are not required to attend a session of the ~~((basic))~~ equivalency

academy (~~which is~~) conducted within the initial sixty days of ~~(the)~~ employment (~~for which certification is requested~~).

It (~~shall be~~) is the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner, and as necessary, to ensure that the participation provided by this section is effected.

~~(The participation of any applicant in any session of the basic equivalency academy not otherwise provided herein shall require the approval of the commission.)~~

(4) In those instances (~~wherein~~) where an applicant has attended more than one basic training program, eligibility for participation in the (~~basic~~) equivalency process (~~shall not be approved if such applicant, for whatever reason, failed to successfully complete~~) will be based upon successful completion of the most recent of such programs attended.

(5) The decision to request an officer's participation (~~within~~) in the equivalency process (~~shall be~~) discretionary with the head of the officer's employing agency, who (~~shall~~) must advise the commission of that decision by appropriate notation upon the hiring notification (~~submitted to the commission for such officer~~) form. Upon receipt of such notification, the commission (~~shall~~) will provide (~~to such agency head~~) all necessary forms and information (~~required for the processing of a request for a certificate of equivalent basic training~~).

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency (~~shall~~) must submit to the commission the following documentation as a precondition of participation within such process:

- (a) A copy of the applicant's current and valid driver's license;
- (b) A copy of the applicant's current and valid basic first-aid card;
- (c) A statement of the applicant's health and physical condition by an examining physician;
- (d) A record of the applicant's firearms qualification;
- (e) A liability release agreement by the applicant; and
- (f) A criminal records check regarding such applicant.

(7) If (~~such~~) comparable emergency vehicle operations training has not been completed previously, the applicant (~~shall~~) will be required to complete the commission's (~~forty hour~~) current emergency vehicle operation course, as scheduled by the commission.

(8) Upon completion of the equivalency process and review and evaluation of the applicant's performance (~~and therein~~), the commission (~~shall~~) will:

- (a) Issue a certificate of completion of equivalent basic law enforcement training; or
- (b) Issue a certificate of completion of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the (~~training~~) commission may require; or
- (c) Require completion of the commission's basic law enforcement academy.

~~((9) Any action or determination by the commission staff regarding a requestor or applicant for equivalency certification shall, upon written request of the involved individual~~

~~or agency, be reviewed by the executive director of the training commission.~~

~~(10) Any waiver of, or variance in, any above requirement for equivalency participation and/or certification may be granted by the commission if it determines that sufficient justification exists for such action.)~~

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

WAC 139-05-220 Backgrounding requirement for admission to basic law enforcement academy. ~~(The Washington state criminal justice training commission is responsible for the conduct of the basic law enforcement academy and to therein certify, to and for the state of Washington, those officers who have demonstrated the ability and suitability requisite to law enforcement service and the public trust.~~

~~In accordance with that responsibility, and to ensure the continuing integrity and credibility of the basic academy program,) It is the responsibility of each sponsoring or applying agency to conduct a complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual (shall) will be granted academy admission or allowed continued participation if (such) the individual (, in adult status, has been convicted of a felony offense, or has been convicted of a gross misdemeanor or misdemeanor involving moral turpitude.~~

~~For this purpose, the term "convicted" shall include any disposition adverse to the subject, except a decision not to prosecute, a dismissal, or acquittal; provided, however, that a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.~~

~~The term "felony offense" shall include any act or omission which is classified as a felony by the laws of the jurisdiction in which such act or omission occurred, or for which imprisonment in a federal or state penitentiary could have been imposed.~~

~~It shall be the responsibility of each sponsoring or applying agency to request a complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate action agency or agencies) is not otherwise eligible for certification or has been convicted of a crime that would make him or her ineligible for certification.~~

Each application for academy attendance (~~shall~~) must be accompanied by a written attestation by the applying agency that (1) the (~~mentioned~~) criminal records check has been (~~effected regarding the individual for which academy application is being made~~) completed, and (2) (~~that such search indicated the absence of any felony conviction or other~~) there are no disqualifying convictions.

~~((No exception to, or variance from, the above requirements or the prohibition which is provided, will be granted without the approval of the training commission.)~~

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

WAC 139-05-230 Physical requirements for admission to basic law enforcement academy. Each successful applicant for admission to a basic law enforcement academy sponsored or conducted by the ~~((Washington state criminal justice training))~~ commission ~~((shall))~~ must possess good health and physical capability to actively and fully participate in defensive tactics training and other required physical activities. In order to minimize risk of injury and maximize the benefit of such participation, each recruit in any academy session ~~((shall))~~ must, as a precondition of his or her academy attendance, demonstrate a requisite level of physical fitness, as established by the ~~((training))~~ commission.

For this purpose, each academy applicant ~~((shall be evaluated))~~ will be assessed in the ~~((assessment))~~ areas of aerobic capacity, strength, and flexibility, in accordance with the requirements and procedures established by the ~~((training))~~ commission.

Failure to demonstrate a requisite level of fitness will result in ineligibility for academy admissions and/or attendance.

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

WAC 139-05-240 Requirements of basic law enforcement academy. ~~((+))~~ Each recruit in a basic law enforcement academy ~~((shall))~~ will receive a certificate of completion only upon full and successful completion of the academy process as prescribed by the ~~((Washington state criminal justice training))~~ commission. The performance of each recruit ~~((shall))~~ will be evaluated as follows:

~~((a) Scholarship-))~~ (1) Academic performance. A standardized examination process ~~((shall))~~ will be utilized by all basic law enforcement academies sponsored or conducted by the ~~((Washington state criminal justice training))~~ commission~~((;))~~ in evaluating the level of scholastic achievement of each recruit. Such process ~~((shall))~~ will include the application of a designated minimum passing score to each subject area and the availability of a retesting procedure. Failure to achieve the required minimum passing score will result in termination of academy assignment.

~~((b) Physical performance-))~~ (2) Practical skills. A standardized evaluation process ~~((shall))~~ will be utilized by all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of ~~((physical))~~ practical performance of each ~~((trainee))~~ recruit. Such process ~~((shall))~~ will include the application of pass/fail grading to designated instructional objectives for physical performance and the availability of a retesting procedure. Failure to achieve a final passing grade in ~~((physical training, including defensive tactics, shall))~~ each practical skills dimension will preclude a certificate of completion.

~~((c) Deportment and))~~ (3) Conduct. Failure to maintain an exemplary standard of ~~((deportment and))~~ conduct or to adhere to all rules, regulations, and policies of a basic law enforcement academy sponsored or conducted by the commission may result in termination of academy assignment.

~~((2) Upon the written request of a recruit, or the head of a recruit's employing agency, any action affecting such recruit's status or eligibility for a certificate of completion shall be reviewed by the commission.))~~

AMENDATORY SECTION (Amending WSR 04-19-050, filed 9/14/04, effective 10/15/04)

WAC 139-05-242 Readmission to basic law enforcement academy. No person may be readmitted to the basic law enforcement training academy except as provided in this section.

(1) Any request for readmission to any academy ~~((shall))~~ must be made and submitted by the individual's employing or sponsoring agency.

(2) Any individual terminated from any academy for academic failure, for disciplinary reasons other than those specified by subsection (3) of this section, or who has voluntarily withdrawn from any academy for any reason, may be readmitted to a subsequent academy session only if:

(a) The head of the individual's current employing agency submits to the commission a written request for readmission of the individual to the academy program, and

(b) The ~~((executive))~~ director of the commission~~((;))~~ or ~~((his or her))~~ designee~~((;))~~ is satisfied that any conditions to the individual's readmission specified by the director or ~~((his or her))~~ designee have been met.

(3) ~~((Any individual dismissed from any academy for disciplinary reasons other than those specified by subsection (4) of this section, may be readmitted to a subsequent academy program only if:~~

~~((a) The head of the individual's current employing agency submits to the commission a written request for readmission, and~~

~~((b) The executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.~~

~~((4))~~ Any person dismissed from any academy for an integrity violation, including but not limited to: Cheating, ~~((or))~~ the commission of a crime, or other violation~~((s))~~ not constituting disqualifying misconduct as defined in RCW 43.101.010(7), ~~((shall))~~ will not be eligible for readmission to any subsequent academy within twenty-four months from the date of dismissal. Such ineligibility ~~((shall))~~ will not be affected by any new employment or reemployment during the period of ineligibility specified in the preceding sentence of this subsection.

~~((5))~~ (4) After the ineligibility period specified in subsection ~~((4))~~ (3) of this section has passed, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only if~~((:~~

~~((a) The head of the individual's current employing agency submits to the commission a written request for readmission, and~~

~~((b) The executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee~~

nee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.

(6)) he or she satisfies the conditions of subsection (2) of this section.

(5) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

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

WAC 139-05-250 Basic law enforcement curriculum.

The basic law enforcement curriculum of the (~~Washington state criminal justice training~~) commission (~~shall~~) may include, but not be limited to, the following core subject areas with common threads of communications, community policing, and (~~police~~) professional ethics throughout:

(1) (~~Introduction to law enforcement;~~) Orientation and history of policing;

- (2) Criminal law;
- (3) Criminal procedures;
- (4) Patrol procedures;
- (5) (~~Communication skills;~~) Crisis intervention;
- (6) Emergency vehicle operation course;
- (7) (~~Human relations;~~) Report writing;
- (8) Traffic law;
- (9) Firearms;
- (10) Defensive tactics; and
- (11) Criminal Investigation.

AMENDATORY SECTION (Amending WSR 05-01-112, filed 12/15/04, effective 1/15/05)

WAC 139-05-300 Requirement for in-service training. ~~((H))~~ The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

~~((2)) (1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 (~~shall~~) will complete a minimum of twenty-four hours of in-service training annually. (~~The commission will establish an optional recordkeeping form along with published guidelines and/or criteria for approved in-service training and education. The training may be developed and provided by the employer or other training resources. The commission will maintain the records of successfully completed commission-sponsored and commission-recognized training. All remaining records for the training required under this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.~~~~

~~(3)) (a)~~ This requirement is effective January 1, 2006, for incumbent officers.

~~(b)~~ The in-service training (~~hours~~) requirement for each newly hired officer (~~will~~) must begin on (~~the~~) January 1 of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC (~~139-05-200~~) 139-05-205.

~~((a)) (c)~~ Training may be developed and provided by the employer or other training resources.

~~(d)~~ The commission will publish guidelines for approved in-service training.

(2) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

(3) The sheriff or chief of an agency may approve an extension of three months for certified officers in their employ by notification in writing to the commission, identifying those specific officers.

~~((b)) (a)~~ A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

~~((e)) (b)~~ Written requests submitted under the provision of (~~(a) and (b) of~~) this subsection must be received by December 1 of the calendar year in question.

AMENDATORY SECTION (Amending WSR 02-02-004, filed 12/20/01, effective 1/20/02)

WAC 139-05-810 Basic training requirement for reserve officers. (1) For the purposes herein:

(a) "Reserve officer" includes any law enforcement officer who does not serve as a law enforcement officer of this state on a full-time basis, but who, when called by such agency into active service, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state; and

(b) "Field assignment" includes any period of active service wherein the assigned officer is expected to take routine and/or special enforcement actions, independently or otherwise, in the same manner and capacity as a full-time officer with such assignment.

(2) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state (~~shall~~) will obtain a basic reserve certificate as a precondition of (~~his/her~~) the exercise of authority pursuant to such act; provided that, any individual possessing a basic reserve certificate issued (~~to him/her~~) by the commission prior to January 1, 1989, (~~shall~~) will be deemed to have met this requirement.

(3) Upon approval of an applicant's eligibility to participate in the reserve (~~certification~~) process, the applicant's employing agency (~~shall~~) must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process.

(4) Each applicant that has been offered a conditional offer of employment as a reserve officer must take and successfully pass a psychological and a polygraph test or similar assessment procedure, administered pursuant to RCW 43.101.105 (2)(a)(i) and (ii).

(5) A basic reserve certificate (~~(shall)~~ will) be issued by the commission to any individual who successfully completes(~~(:~~

(a)) a basic course of instruction for reserve officers as prescribed and required by the commission(~~(;~~ and

(b) ~~A comprehensive examination developed and administered by the commission).~~

~~((5)) (6)~~ Requirements of subsection ~~((4)) (5)~~ of this section may be waived in whole or in part ~~((as determined by)).~~ A request for waiver must be made under WAC 139-03-030. In reviewing such request, the commission ((and based upon)) will consider the following:

(a) An evaluation of an applicant's experience and training accomplishments;

(b) The fact that an individual is a regular full-time commissioned law enforcement officer who leaves full-time employment; or

(c) The fact that an officer has been certified in accordance with the requirements of subsection (2) of this section, and thereafter has engaged in regular and commissioned law enforcement employment without break or interruption in excess of twelve months duration.

~~((In all of the above instances, the requests for such waiver must be submitted to the commission on an approved form by the applicant's agency head and, if approved, may result in direct issuance of a basic reserve certificate or issuance of such certificate upon successful completion of specific training requirements prescribed by the commission.))~~

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

WAC 139-05-912 Requirement of training for state fire marshals. (1) The training prescribed herein (~~(shall)~~ constitutes(~~(:~~

(a)) that the training requirement which must be met by deputy state fire marshals (~~(and resident fire marshals))~~ as a precondition of any exercise of police powers granted to such personnel by RCW 48.48.060(~~(;~~ and

(b) ~~The training standard recommended by the criminal justice training commission for local agencies employing a training requirement or prerequisite for the purpose of commissioning fire personnel).~~

(2) The training requirement herein prescribed for the purpose of RCW 48.48.060 (~~(shall)~~ will) be met by:

(a) ~~((Obtainment of the training))~~ Obtaining the commission's basic law enforcement certificate(~~(;~~ or

(b) ~~((Obtainment of))~~ Obtaining the ((training)) commission's basic law enforcement equivalency certificate(~~(;~~ or

(c) ~~Successful completion of a training program of at least one hundred and seventy-six hours, including:~~

- (i) Criminal investigation 52 hours
- (ii) Criminal law 40 hours
- (iii) Criminal procedures 42 hours
- (iv) Human relations 38 hours
- (v) Use of force 04 hours))

and completion of other training as may be required by the agency.

(3) No authorization, expressed or implied, to carry a firearm in the performance of official duties may be granted to any deputy state fire marshal (~~(or resident fire marshal))~~ unless such personnel has successfully completed a basic firearms training program. Such program (~~(shall)~~ must) be at least forty hours in length and include instruction in firearms care, handling, and usage, and a range qualification course approved by the (~~(training))~~ commission. Thereafter (~~((such personnel shall successfully complete an eight-hour firearms requalification course approved by the training commission during each year in which authorization to carry a firearm is granted or remains in effect)).~~ it shall be the responsibility of the chief of the state patrol to set the standard, which will be met for each fire marshal to carry a firearm.

(4) It (~~(shall be))~~ is the responsibility of the state fire marshal to effect and ensure personnel compliance (~~(herein:))~~ and to provide documentation of such compliance upon the request of the (~~(training))~~ commission.

AMENDATORY SECTION (Amending WSR 05-01-114, filed 12/15/04, effective 1/15/05)

WAC 139-05-915 Requirements of training for law enforcement and corrections dog handlers and certification of canine teams. (1) Title and scope: These rules are intended to set minimum standards of performance for the certification of canine teams that are used for law enforcement or corrections purposes. This process is not related to nor does it have any effect upon the requirements for peace officer certification. Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington peace officer or corrections officer.

(2) For purposes of this section, the following definitions (~~(shall)~~ will) apply:

(a) "Dog handler" means any fully commissioned law enforcement officer or corrections officer of a state, county, city, municipality, or combination thereof, agency who is responsible for the routine care, control, and utilization of a police canine within a law enforcement or corrections assignment; and

(b) "Canine team" means a specific officer and a specific canine controlled by that officer in the capacity of handler, formally assigned by the employing agency to work together in the performance of law enforcement or corrections duties.

(c) "Training" means any structured classroom or practical learning exercise conducted, evaluated, and documented by an experienced dog handler or trainer, certified as an instructor with recognized expertise on canine subjects associated with the development of the trainee's competency in the care, control, and utilization of a police canine.

(d) "Evaluator" means a certified peace officer or corrections officer, who has a minimum of three years experience as a dog handler and is recognized as a trainer of canines by a professional organization of police and/or corrections dog handlers/trainers or by the handler's employing agency. The trainer must have trained a canine team in accordance with the training requirements of WAC 139-05-915, or be recognized by the commission as a certified instructor with exper-

tise in canine training of a specific police canine subject for the purpose of testing and certifying dog handlers and canines to work as a canine team.

(3) A dog handler ~~((shall))~~ must, as a precondition of such assignment, successfully complete the basic law enforcement academy or basic corrections officer academy, or otherwise comply with the basic training requirement prescribed by WAC 139-05-200 and 139-05-210 of the ~~((training))~~ commission.

(4) Prior to such assignment, a dog handler ~~((shall))~~ must successfully complete training according to the nature and purpose of utilization of the police canine for which such handler is responsible.

(a) A dog handler who is responsible for the routine and regular utilization of a police canine within general patrol or investigative activities, ~~((shall))~~ must successfully complete a minimum of four hundred hours of training, which ~~((shall))~~ will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) Obedience and control;
- (vi) Tracking;
- (vii) Trailing;
- (viii) Area search;
- (ix) Building search;
- (x) Evidence search;
- (xi) Pursuit and holding; and
- (xii) Master protection.

(b) A dog handler who is responsible for the primary and specialized utilization of a police canine in the search for and detection of specific substances, excluding explosives, ~~((shall))~~ must successfully complete a minimum of two hundred hours of training, which ~~((shall))~~ will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) Obedience and control;
- (vi) Area search;
- (vii) Building search;
- (viii) Evidence search;
- (ix) Vehicle search; and
- (x) Detection of specific substances.

(c) A dog handler who is responsible for the primary and specialized utilization of a police canine in the search for and detection of explosive substances and devices, ~~((shall))~~ must successfully complete a minimum of four hundred hours of training, which ~~((shall))~~ will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) Obedience and control;
- (vi) Area search;

- (vii) Private and commercial conveyance search;
- (viii) Building search;
- (ix) Evidence search; and
- (x) Detection of explosives.

(d) A dog handler who is responsible for the routine and regular utilization of a police canine solely for self-protection and assistance in hostile or potentially hostile situations, ~~((shall))~~ must successfully complete at least two hundred hours of training, which ~~((shall))~~ will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) Obedience and control;
- (vi) Pursuit and holding; and
- (vii) Master protection.

(5) The commission ~~((shall))~~ will develop and adopt a minimum performance standard for canine teams performing specific law enforcement or corrections functions. It ~~((shall be))~~ is the handler's responsibility to keep their canines under control at all times. Each handler must be able to make their canine perform to a level that is deemed acceptable by the commission in the category for the team's intended use as a condition of certification.

(6) Certification of canine teams:

(a) The handler and the canine will be considered as a team and it is the team who will be certified. If the canine or the handler changes, a new team exists and the team must be certified.

(b) A dog handler may not use a canine for police purposes unless the handler is certified to handle a specific canine for a specific purpose.

(c) In evaluating the proficiency of the canine team, the evaluators shall use the standards approved by the commission for that particular skill category. Performance ~~((shall))~~ will be rated on a pass/fail basis. The evaluator ~~((shall have))~~ has the discretion to discontinue the testing if excessive time has been spent without results, or if there is a concern about safety issues involving the canine, handler, or equipment.

(d) The commission ~~((shall))~~ will certify a canine team who can successfully show proficiency, under scrutiny of a canine evaluator, in all of the areas in which the canine will be used:

(i) Patrol and investigation:

- (A) Obedience;
- (B) Protection and control;
- (C) Area search;
- (D) Building search; and
- (E) Tracking.

(ii) Detection:

- (A) Building search;
- (B) Vehicle search;
- (C) Exterior search; and
- (D) Obedience.

(iii) Explosive detection:

- (A) Obedience;
- (B) Building search;
- (C) Private and commercial conveyance search;

- (D) Exterior search.
- (iv) Master protection:

- (A) Obedience;
- (B) Protection and control.

(e) Each certification issued pursuant to these rules ~~((shall))~~ will remain valid as long as the composition and responsibility of the canine team does not change. A canine team's certification ~~((shall))~~ expires if the specific handler and canine, originally paired at the time of certification, cease to perform canine team functions together or if the function for which the team was certified changes. It is recommended that teams recertify on an annual basis.

(f) If the canine team fails any phase of an evaluation, the team must be reevaluated in that particular phase. Canine teams will be allowed three attempts to successfully pass the requirements of each phase during an evaluation. If the team does not pass by the third attempt, the team ~~((shall))~~ must be reevaluated in all phases at a different time to be scheduled by the evaluator and approved by the commission.

~~((g) Any handler who believes there has been improper procedures applied in the testing process, may file an appeal with the commission in writing. This appeal must be filed within thirty days of the last testing date pursuant to WAC 139-03-020.))~~

(7) Recordkeeping:

(a) Each agency ~~((shall be))~~ is required to keep training, performance, and identification records on canines. The records must stay with the agency responsible for the canine team. The records ~~((shall))~~ will be made available for review in the event that the canine is sold or transferred to another agency. The records ~~((shall))~~ will include, but not be limited to:

- (i) Microchip number (if applicable);
- (ii) Canine's name;
- (iii) Breed;
- (iv) Training records;
- (v) Certification date;
- (vi) Date acquired or purchased;
- (vii) Source from which the canine was acquired;
- (viii) Purpose, use, or assignment of canine;
- (ix) Handler's name;
- (x) The date and reason the canine was released from service; and
- (xi) Copies of all incident reports in which use of the canine resulted in the use of force.

(b) These records ~~((shall))~~ must be retained for a period of one year from the date the canine is removed from active service unless a longer retention is required by statute or local ordinance.

(c) It ~~((shall be))~~ is the responsibility of the handler to advise their employing agency of the fact that they have met the standards for canine certification. The proof of certification with the evaluator's signature along with a request for canine certification ~~((shall))~~ must be submitted to the commission by the employing agency. This ~~((shall))~~ will be considered as a request for certification. Upon verification that the minimum requirements have been met, the commission ~~((shall))~~ will issue certification to the canine team.

(8) It is recommended that a canine intended for use by a law enforcement or corrections agency, be positively identi-

fied by having a microchip medically inserted in the canine. Any canine that is sold by a vendor to a Washington state governmental agency for use as a law enforcement or corrections canine should be able to be identified by microchip placed in the canine at the vendor's expense prior to the canine being sold to the law enforcement or corrections agency.

Once the microchip has been inserted, it is recommended that it not be removed except for medical necessity. If it becomes necessary to remove the microchip, the reason for the removal must be documented and entered into the canine's training records and a new microchip inserted, if medically appropriate.

AMENDATORY SECTION (Amending Order 1-B, filed 9/10/86)

WAC 139-05-920 Requirement of training for agriculture officers. (1) For purposes of this regulation, the term "agriculture officer" means any individual appointed by the state director of agriculture to enforce those laws relating to ~~((commission merchants, livestock identification, and livestock brand registration and inspection))~~ the department of agriculture.

(2) As a precondition of any exercise of enforcement authority ~~((generally vested in a peace officer)),~~ an agriculture officer ~~((shall))~~ must successfully complete training which ~~((shall))~~ will include, but is not limited to:

(a) ~~((Criminal procedures, to include the legal system, search and seizure, laws of arrest, and constitutional law—eight hours;))~~ Crime scene investigation;

(b) ~~((Evidence law—two hours;~~

~~((c))~~ Criminal investigation~~((—eight hours));~~

~~((d))~~ (c) Effective interviewing and interrogation~~((—four hours));~~

~~((e))~~ Communication skills~~((—six hours;))~~ (d) Report writing;

~~((f))~~ (e) Criminal law~~((—four hours))~~ to include Titles 9A and 20;

~~((g))~~ (f) Officer safety ~~((and basic patrol procedures—four hours));~~

~~((h))~~ Use of deadly force~~((—four hours;))~~ (g) Defensive tactics.

(3) As a precondition of any authorization to carry a firearm during the performance of duties, an ~~((authorized))~~ agriculture officer ~~((shall))~~ with enforcement authority will have successfully qualified in the firearms course which is incorporated by the basic law enforcement academy program of the ~~((Washington state criminal justice training))~~ commission, or is otherwise approved by the ~~((training))~~ commission. ~~((Such))~~ Following the initial qualification ~~((shall))~~ , the department of agriculture must insure that such qualification be effected annually~~((;))~~ or within a period of twelve months preceding the aforementioned firearms authorization.

(4) It ~~((shall be))~~ is the responsibility of the state director of agriculture to effect and ensure personnel compliance ~~((herein))~~ and to provide necessary records and information upon the request of the ~~((training))~~ commission, to which said director ~~((shall be))~~ is accountable for purposes of such compliance. Additionally, any equivalency process or official

recognition of equivalent training or experience in determining an agriculture officer's compliance (~~herein shall~~) will be within the prerogative and authorities of such director.

AMENDATORY SECTION (Amending WSR 03-19-122, filed 9/17/03, effective 10/18/03)

WAC 139-05-925 Requirement of training for railroad police officers. (1) For the purpose of this regulation, the term "railroad police" means any individual appointed by the commission under the provisions of RCW 81.60.010 through 81.60.060.

(2) Effective January 1, 2002, as a precondition of any newly appointed railroad police officer to enforce the laws of this state, railroad police (~~shall~~) must:

(a) Possess the commission's basic certificate, or in the alternative have successfully completed training and possess a basic certification from another state. In the event certification and training are from another state, the newly appointed railroad police officer must satisfactorily complete the equivalency course approved by the commission, within the first six months of employment.

(b) The above requirements do not apply to railroad police officers appointed prior to January 1, 2002; however, they may, if qualified, attend the equivalency academy.

(c) Railroad police officers whose primary duties are those of administration of other railroad police officers may request an administrative exemption from the above training requirements. Administrative exemptions may be granted by the commission provided that the initial grant and continuing effect of such exemption (~~shall be~~) is governed by the provisions of WAC (~~(139-05-200(2)(e)(i))~~) 139-05-205.

(3) It (~~shall be~~) is the responsibility of the railroad police officer's employing agency to effect and ensure personnel compliance herein, and provide necessary records, proof of background check information upon request of the commission to which the employing agency (~~shall be~~) is accountable for purposes of compliance.

(4) The corporation requesting appointment of a railroad police officer (~~shall~~) will bear the full cost of training or any other expenses.

NEW SECTION

WAC 139-05-935 Review of staff action. Any person aggrieved by a decision of commission staff under this chapter, or the head of the aggrieved person's agency, may request review by the commission by making a request for an adjudicative proceeding under WAC 139-03-020.

NEW SECTION

WAC 139-05-940 Exemption, waiver, extension or variance. Any request for exemption, waiver, extension or variance from any requirement of this chapter must be made under WAC 139-03-030.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-05-820 Basic reserve equivalency certification.

WAC 139-05-930 Certification/decertification of D.A.R.E. officer.

WSR 05-20-036

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 29, 2005, 12:28 p.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: WAC 458-20-100 explains the procedures for administrative review of actions of the Department of Revenue. The revised rule provides clearer and more up-to-date information to taxpayers and department personnel on appeal procedures, increases small claim limits, and provides for proposed decisions in executive level appeals. The information in the rule has also been reorganized to make it easier for readers to understand and use.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-100 Appeals.

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

Other Authority: RCW 82.01.060(4).

Adopted under notice filed as WSR 05-15-025 on July 8, 2005.

Changes Other than Editing from Proposed to Adopted Version: The following clarifications were made to this rule:

- Letter rulings issued by the department under subsection (2)(b) of the rule are binding only if the taxpayer's name has been disclosed in the request;
- A letter ruling may lose its binding effect due to a court decision only if the decision is published, issued by an appellate-level court, and is not subject to further review (subsection (2)(b));
- Although the department makes an appeal form available on its web site, a taxpayer may file an appeal in a different format as long as it includes all of the necessary information included on the departmental form (subsection (3)); and
- Cross-references to RCW 82.03.130 (1)(a) and 82.03.190 are corrected (subsection (8)).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: September 29, 2005.

Janis P. Bianchi, Manager
Interpretations and Technical Advice Unit

AMENDATORY SECTION (Amending WSR 90-24-049, filed 11/30/90, effective 1/1/91)

WAC 458-20-100 Appeals(~~(small claims and settlements)~~). (1) **Introduction.** ((This section explains the procedure for a taxpayer to seek an administrative review of an action by the department of revenue. A taxpayer is encouraged to request a conference with a supervisor of the department where disagreement exists over a proposed action of the department. The request for the conference should be made to the division of the department that is proposing to issue an assessment or is taking some other action in dispute. Such conferences provide an opportunity to resolve any issue without a review as provided in this section. Any taxpayer who has been issued a notice of departmental action or having paid any tax administered by chapter 82.32 RCW may petition the department of revenue for the review of the action or for a determination of the taxpayer's liability for the tax paid. Departmental actions subject to review include but are not limited to:

- (a) A notice of assessment of additional taxes, of use tax due, or of tax balances due;
- (b) A notice of penalties or interest due;
- (c) A notice of delinquent taxes, including a notice of tax collection activities; and
- (d) An order revoking a certificate of registration.

(2) **Time for filing of petitions—extensions.** A review of a departmental action is started by the filing of a petition for review. A petition for review must be filed with the department within thirty days after the date the departmental action has occurred.

(a) A petition for review requesting a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. Therefore, the department may not grant an extension of time to file a petition for review requesting a refund of taxes paid.

(b) An extension of time to file a petition may be granted if requested within the thirty-day filing period.

(c) A petition or request for extension is timely if it bears a United States Postal Service cancelled postmark on or before the thirty-day due date or is received by the department within the thirty-day filing period.

(3) **Contents of petitions.** A petition should be addressed: State of Washington, Department of Revenue, Interpretations and Appeals, Mailstop AX-02, Olympia, Washington 98504-0090. A petition must be in writing and contain the following information:

- (a) Indicate which item or items are in question;

(b) Set forth the reasons why the correction, refund, or relief should be granted;

(c) State the amount of the tax, and/or interest, and/or penalty which the taxpayer believes to be in error or which the taxpayer seeks to be refunded;

(d) Indicate whether the petitioner elects to have the petition heard under the small claims procedure;

(e) Indicate whether the petitioner requests the petition to be heard as an executive level petition stating the specific reasons for the request;

(f) In the case of an appeal of an order revoking a certificate of registration, specifically identify the mistake of fact, error of law, or the date the warrant was paid; and

(g) Be signed by the taxpayer and/or authorized representative.

(h) The department has provided as an addendum to this section a form which when completed will provide the necessary information. A taxpayer wishing a review is encouraged to provide the information requested so that the appeal can be processed, heard, and decided as quickly as possible.

(4) **Hearing on the petition—issuance of determination.** A petition for review may be granted or denied. If a review is denied, the taxpayer shall be promptly notified by mail. The reason for the denial, e.g., the nontimely filing of the petition, shall be included in the notification.

(a) When a petition for review is granted, the department may grant a hearing or issue a determination without conducting a hearing. If a hearing is granted, the taxpayer is notified by mail of its time and place. Most hearings are conducted by telephone conference. If a taxpayer prefers and requests an in-person hearing at the department's Olympia office, the request will be granted. Hearings at offices of the department of revenue throughout the state may be granted upon special request of the taxpayer and at the discretion of the department.

(b) Hearings will be conducted by an administrative law judge of the department of revenue, an employee specially trained in interpretation of the Revenue Act and the precedents established by prior department rulings and by the courts. Other departmental employees may be in attendance at an in-person hearing and the department shall notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other person.

(c) All hearings before an administrative law judge will be conducted informally in a nonadversary, uncontested manner.

(d) Following the hearing, the administrative law judge will make such determination as may appear to be just and lawful and in accordance with the rules, principles, and precedents established by the department. The department shall notify the taxpayer in writing of the decision.

(e) The determination of the administrative law judge is the official position of the department of revenue and is binding upon the taxpayer unless a petition for reconsideration is timely filed. See: Subsection (8) of this section for taxpayer appeals outside the department.

(5) **Request for reconsideration.** If a taxpayer believes that an error has been made in the determination of the administrative law judge, the taxpayer may, within thirty

days of the issuance of the determination, request in writing a reconsideration of the decision. A petition for reconsideration may be made on the petition form provided as an addendum to this section. The request for reconsideration shall indicate specific mistakes in law or fact and provide legal authority that would necessitate the reconsideration of the decision. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue which has industry wide impact or significance.

The department shall decide whether or not the decision is to be reconsidered and may grant or deny the petition. If the request for reconsideration is denied, the department shall mail to the taxpayer written notice of the denial and the reason for the denial, e.g., the petition is not timely filed, the authorities specified do not support a mistake of law, or the facts specified were considered in the determination. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. If a hearing is granted, it shall be conducted informally in a nonadversary, uncontested manner, and shall be held at the department offices in Olympia. A determination upon reconsideration shall be sent to the taxpayer in writing and shall represent the final action of the department of revenue.

(6) Request for hearing at the executive level. If a taxpayer appeal involves an issue of first impression (one for which no precedent has been established) or an issue which has industry wide significance or impact, a taxpayer may request the petition be heard at the executive level by the director or the director's designee. The request must specify the reasons why this action is appropriate. The department may grant or deny the request. An executive level hearing shall be conducted informally in a nonadversary, uncontested manner. A determination from an executive level appeal is the final action of the department and a request for reconsideration will not be granted.

(7) Small claims hearing. Under certain conditions, a taxpayer may elect, by so indicating on the petition, to have the appeal heard under the expedited small claims hearing procedure.

(a) An appeal qualifies for a small claims hearing only if:

(i) The tax at issue in the appeal is five thousand dollars or less; or

(ii) Penalties and/or interest is the only issue and the amount of penalties and/or interest is ten thousand dollars or less.

(b) The department may decline to hear an appeal under the small claims procedure if the department finds it to be unsuitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry wide application, and constitutional issues are generally not suitable for small claims resolution.

(c) After the small claims hearing with the administrative law judge has been conducted, the taxpayer may no longer revoke the election for small claims resolution.

(d) The taxpayer will be notified of the time and place of the hearing. The hearing will be conducted informally in a nonadversary, uncontested manner by an administrative law judge and the taxpayer may personally, or through a representative, present oral and/or written testimony at that time.

Upon conclusion of the hearing, the administrative law judge may render an oral decision at that time, but in no case will the decision be rendered more than five working days after the hearing. In all small claims hearings, either an abbreviated written decision (determination) containing the department's conclusions will be issued, or a closing agreement will be signed.

(e) The decision rendered in a small claims hearing is the final action of the department and a taxpayer request for reconsideration of the decision will not be granted.

(f) A decision rendered in a small claims hearing has no precedential value.

(8) Appeals to board of tax appeals—Thurston County Superior Court. A taxpayer may appeal a determination of the department of revenue to the board of tax appeals or may seek a refund of taxes paid in Thurston County Superior Court. See: Chapter 82.03 RCW, and RCW 82.32.180. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department of revenue for a stay of collection pursuant to RCW 82.32.200. See: WAC 458-20-228.

(9) Rulings of prior determination of tax liability. Any taxpayer may make a written request to the department for a written opinion of future tax liability. Such a request shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented until the department changes the opinion by a determination or subsequent opinion issued to the taxpayer, or the legal basis of the opinion has been changed by legislative, court, or WAC rule action. When changes occur, a taxpayer may contact the department to determine if a change in the legal basis of the opinion has occurred. Any future change in the opinion shall have prospective application only.

(10) Settlement. At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change; or

(ii) A conflict exists between precedents i.e., statutes, rules, excise tax bulletins, and correspondences to the taxpayer; or

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve; or

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department; or

(ii) The taxpayer challenges a long-standing departmental policy or a WAC rule which the department will not change unless the policy or rule is declared invalid by a court of record; or

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case; or

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(e) Each settlement is concluded by a closing agreement being signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

PETITION

STATE OF WASHINGTON
DEPARTMENT OF REVENUE
INTERPRETATION AND APPEALS
MAILSTOP AX-02
OLYMPIA, WA 98504-0090

Taxpayer Name
Address and
Telephone No.

Name, address and
Telephone No.
of Representative:

Registration No.:

Amount At Issue:

Audit No.: Document No.:

Do you request this petition to be heard under the small claims procedure? The small claims procedures are limited to appeals of tax issues which do not exceed \$5,000 or issues involving penalties and interest which do not exceed \$10,000. You may not revoke your request to be heard under the small claims procedure after the conference with the administrative law judge has been held. Under the small claims procedures, the decision of the department is final and the department will not accept a petition for reconsideration.

Yes No

Do you request this petition to be heard as an executive level petition? A petition for executive level consideration may be granted if the issue is one of first impression or the issue has industry-wide impact or significance. The specific reasons for an executive level appeal must be specified in the petition. A decision of a petition heard at the executive level is the final decision of the department and a petition for reconsideration will not be accepted.

Yes No

Is this a petition for reconsideration?

Yes No

Is this a petition for executive level reconsideration? (Specific reasons must be specified.)

Yes No

Items Protested (attach additional information if necessary):

Time Period at Issue:

Relief Requested (attach additional information if necessary):

Reason for relief (cite applicable rules, statutes, etc., and attach additional information if necessary):

(Signature of Taxpayer or Authorized Representative - Date))

(a) This rule explains the procedures for administrative review of actions of the department or of its officers and employees in the assessment or collection of taxes, as provided in RCW 82.01.060(4), including, but not limited to:

- (i) An assessment of tax, interest, or penalties;
(ii) The denial of a refund, credit, or deferral request;
(iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
(iv) The issuance of an adverse ruling on future liability from the taxpayer information and education section.

(b) Persons seeking administrative review of a business license revocation, a cigarette license revocation or suspension, a log export enforcement action, or orders to county officials under Title 84 RCW should refer to the following rules:

- (i) WAC 458-20-10001 for information on the revocation of a certificate of registration or the revocation or suspension of a cigarette license; or
(ii) WAC 458-20-10002 for information on log export enforcement actions and orders to county officials issued under RCW 84.08.120 and 84.41.120.

(2) Preappeal supervisor's conference and preappeal rulings on future liability.

(a) Supervisor's conferences. Taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences provide an opportunity to resolve issues prior to the review provided in this rule.

(b) Rulings. Taxpayers may request an opinion on future reporting instructions and tax liability from the department's taxpayer information and education section of the taxpayer services division. The request must be in writing, contain all pertinent facts concerning the question presented, and may contain a statement of the taxpayer's views concerning the correct application of the law. The department will advise the taxpayer in writing of its opinion in a tax ruling. The tax ruling must state all pertinent facts upon which the opinion is based and, if the taxpayer's name has been disclosed, is binding upon both the taxpayer and the department under the facts stated. It will remain binding until the facts change, the applicable statute or rule changes, a published appellate court decision not subject to review changes a prior interpretation of law, the department publicly announces a change in the policy upon which this ruling is based, or the taxpayer is notified in writing that the ruling is no longer valid. Any change in the ruling will have prospective application only. Rulings on future tax liability are subject to review as provided in this rule.

(3) How are appeals started? A taxpayer starts a review of a departmental action by filing a written petition. Petitions should be addressed to:

Appeals Division
Washington State Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460

A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the appeals division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

(a) The taxpayer's name, address, registration/UBI number, telephone number, fax number, e-mail address, and contact person;

(b) If represented, the representative's name, address, telephone number, fax number, and e-mail address;

(c) Identifying information from the assessment notice, balance due notice, or other document being appealed;

(d) The amount of tax, interest, or penalties in controversy, and the time period at issue;

(e) The type of appeal requested (see subsection (6) of this section);

(f) Whether an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing is requested; and

(g) A brief explanation of each issue or area of dispute and an explanation why each issue or area of dispute should be decided in the taxpayer's favor. To the extent known or available, taxpayers should cite applicable rules, statutes, or

supporting case law and provide copies of records that support the taxpayer's position.

If a petition does not provide the required information, the department will notify the taxpayer in writing that the petition is not accepted for review. The notice will provide a period of time for the taxpayer to cure the defects in the petition. If a taxpayer is represented, the taxpayer should also have on file with the department a confidential tax information authorization.

(4) To be timely, when must a petition be filed or extensions requested? A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The appeals division may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions may be in writing or by telephone, and must be directed to the department's appeals division.

(b) A petition or request for extension is timely if it is postmarked or received within the thirty-day filing period.

(c) The appeals division may not grant an extension of time to file a petition for refund that would exceed the time limits in WAC 458-20-229 (Refunds). A request for a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. See WAC 458-20-229 for procedures on seeking a refund.

(d) The appeals division will notify taxpayers in writing when a petition is rejected as not timely.

(5) How are appeals scheduled, heard, and decided? The appeals division will acknowledge receipt of the petition and identify the administrative law judge (ALJ) assigned to the appeal. ALJs are attorneys trained in the interpretation of the Revenue Act and precedents established by prior rulings and court decisions. They are employed by the department to provide an informal, final review of agency actions.

(a) Scheduling. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) Hearings. Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the taxpayer does not request a hearing, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The appeals division will notify the taxpayer by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other departmental employees may attend a hearing, and the ALJ will notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before an ALJ are conducted informally and in a nonadversarial, uncontested manner.

(c) Hearing and posthearing submissions. If a taxpayer asks to submit additional records or documents at a hearing, the taxpayer must explain why they were not submitted under the deadlines established in the scheduling letter. The ALJ has the discretion to allow late submissions by the taxpayer or the department and, if allowed, will provide the other party with additional time to respond. If additional document production or additional briefing is allowed by the ALJ, posthearing, such briefing or documents usually must be submitted within thirty days after the hearing, unless good cause is shown for additional time. ALJs have the discretion to allow additional time for further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) Determinations. Following the hearing, if any, and review of all submissions, the ALJ will issue a determination consistent with the applicable statutes, rules, case law, and department precedents. The appeals division will notify the taxpayer in writing of the decision. The determination of the ALJ is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department.

(6) Are all appeals the same? No, in addition to regular appeals, called mainstream appeals, an appeal may also be assigned as a small claims or executive level appeal based on the amount at issue or the complexity of the issues. In addition, an appeal may be expedited under certain urgent circumstances.

(a) Small claims appeals. Except as set forth in (a)(i), (ii), or (iii) of this subsection, when the tax at issue in the appeal is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue in the appeal is fifty thousand dollars or less, the appeal will be heard as a small claims appeal.

(i) The department may decline to hear an appeal as a small claims appeal if the department finds the appeal is not suitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, or constitutional issues are generally not suitable for small claims resolution.

(ii) The appeals division will notify the taxpayer in writing when an appeal is to be heard as a small claims appeal. The taxpayer may request in writing that the matter not be heard as a small claims appeal. Such requests will be granted if received or postmarked within fifteen days following the date of the notice.

(iii) In the petition the taxpayer may affirmatively request that the petition not be heard as a small claims appeal. Such requests will be granted.

Taxpayers should provide all evidence and supporting authority prior to or during the small claims hearing. Within ten working days of a small claims hearing, the department will issue an abbreviated written decision (determination) containing only the department's conclusions. The determination in a small claims appeal is the final action of the department.

(b) Executive level appeals. If an appeal involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the petition

be heard at the executive level. The request must specify the reasons why an executive level appeal is appropriate. The appeals division will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and an ALJ will hear the matter. The appeals division, on its own initiative, may also choose to hear an appeal at the executive level. The appeals division will notify the taxpayer if the department chooses to hear an appeal at the executive level.

Following the executive level hearing, the appeals division will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer or another division of the department timely files an objection to the proposed determination. Objections must identify specific errors of law or fact. Unless an extension is granted, objections must be postmarked or received by the appeals division within thirty days from the date the proposed determination was issued. The taxpayer or operating division filing objections must also provide the other party with a copy of its objections. The ALJ will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the ALJ and the director's designee, in consultation with the director, may grant a second hearing to hear argument on the objections. The determination in an executive level appeal is the final action of the department.

(c) Expedited appeals. On a very limited basis it may be necessary to expedite the review of a petition. Taxpayers or other divisions in the department requesting expedited review must make the request in writing to the appeals division, with a copy supplied to the other party. The appeals division will grant or deny such requests solely at its discretion. The appeals division will advise the taxpayer and the affected division of its decision pertaining to the expedited review request. This decision is not subject to appeal. Expedited review will be limited to appeals where it is clear that:

(i) There is a particular and extraordinary business necessity;

(ii) Document review is the only issue;

(iii) Only a legal issue remains in an appeal following a remand to an operating division;

(iv) A jeopardy warrant or bankruptcy is likely; or

(v) Urgent review is necessary within the department.

If expedited review is at the taxpayer's request, the determination in an expedited appeal is the final action of the department. If expedited review is requested by the department, the taxpayer may petition for reconsideration as provided in subsection (7) of this section.

(7) Request for reconsideration. If a taxpayer believes that an error has been made in a determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Small claim appeals, executive appeals, and appeals expedited at the request of the taxpayer are not subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance. The request for execu-

tive reconsideration must also specify the reasons why executive level review is appropriate.

The appeals division may, without a hearing, grant or deny the request for reconsideration. If the request is denied, the department will mail to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The board of tax appeals also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and 82.49.060 (relating to watercraft excise tax). The board of tax appeals does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by the taxpayer information and education section. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department for a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) **Thurston County superior court.** A taxpayer may also pay the tax in dispute and petition for a refund in Thurston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.

(10) **Settlements.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement. Taxpayers interested in settling a dispute should submit a written offer to the ALJ. The offer should identify the amount in dispute, why the dispute should be settled, the amount offered in settlement, and why the amount being offered is reasonable.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, excise tax bulletins, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve.

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department;

(ii) The taxpayer challenges a long-standing departmental policy or a rule that the department will not change unless the policy or rule is declared invalid by a court of record;

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

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

WSR 05-20-049

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 30, 2005, 4:31 p.m., effective October 31, 2005]

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

Purpose: The department is repealing these sections because the method of purchasing interpreter services on behalf of limited-English speaking or sensory-impaired applicants and clients of public assistance was replaced with a new "brokerage" model for all DSHS programs effective January 2003. Under the brokerage model, DSHS contracts at a specified rate with any qualified individual or agency and contracts with intermediaries who schedule and link interpreters with clients and service providers. Since the broker requirements are now specified in contract, these rules are no longer applicable.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-555-1000, 388-555-1050, 388-555-1100, 388-555-1150, 388-555-1200, 388-555-1250, 388-555-1300, 388-555-1350, 388-555-1400, and 388-555-1450.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: RCW 39.29.040, 43.19.190.

Adopted under notice filed as WSR 05-15-151 on July 19, 2005.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 10.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 10.

Date Adopted: September 23, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-555-1000	Definitions.
WAC 388-555-1050	Covered services.
WAC 388-555-1100	Noncovered services.
WAC 388-555-1150	Eligible providers.
WAC 388-555-1200	Provider requirements.
WAC 388-555-1250	Coordination of services.
WAC 388-555-1300	Payment.
WAC 388-555-1350	Payment methodology.
WAC 388-555-1400	Recordkeeping and audits.
WAC 388-555-1450	Services at federally qualified health clinics.

WSR 05-20-050

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 30, 2005, 4:33 p.m., effective October 31, 2005]

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

Purpose: Amending WAC 388-531-2000, corrects an unnecessarily restrictive element in current WAC that prohibits payments from the department's trauma care fund (TCF) to physicians for services provided to general assistance-unemployable (GA-U) and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) clients. It was never legislatively intended to restrict TCF payments to physicians who provide services to GA-U and ADATSA clients, since no disproportionate share hospital (DSH) funds are used to pay physicians.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-2000.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 05-17-159 on August 22, 2005.

A final cost-benefit analysis is available by contacting Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510,

phone (360) 725-1835, fax (360) 753-9152, e-mail wimpeah@dshs.wa.gov. The preliminary cost-benefit analysis is unchanged and will be final.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: September 29, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-19-113, filed 9/21/04, effective 10/22/04)

WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases. (1) The department's trauma care fund (TCF) is an amount that is legislatively appropriated to DSHS each biennium for the purpose of increasing the ~~((medical assistance administration's (MAA's)))~~ department's payment to eligible physicians and other clinical providers for providing qualified trauma services to Medicaid, General assistance-Unemployable (GA-U), and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) fee-for-service clients. Claims for trauma care provided to clients enrolled in ~~((MAA's))~~ the department's managed care programs are not eligible for increased payments from the TCF.

(2) Beginning with services provided after June 30, 2003, ~~((MAA))~~ the department makes increased payments from the TCF to physicians and other clinical providers who provide trauma services to Medicaid, GA-U, and ADATSA clients, subject to the provisions in this section. A provider is eligible to receive increased payments from the TCF for trauma services provided to a GA-U or ADATSA client during the client's certification period only. See WAC 388-416-0010.

(3) ~~((MAA))~~ The department makes increased payments from the TCF to physicians and other clinical providers who:

(a) Are on the designated trauma services response team of any department of health (DOH)-designated trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC; and

(d) Submit all information ~~((MAA))~~ the department requires to ensure trauma services are being provided.

(4) Except as described in subsection (5) of this section and subject to the limitations listed, ~~((MAA))~~ the department makes increased payments from the TCF to physicians and other eligible clinical providers:

(a) For only those trauma services that are designated by ~~((MAA))~~ the department as "qualified." These qualified services must be provided to eligible fee-for-service Medicaid, GA-U, and ADATSA clients. Qualified trauma services include care provided within six months of the date of injury for surgical procedures related to the injury if the surgical procedures were planned during the initial acute episode of injury.

(b) For hospital-based services only.

(c) Only for ~~((Medicaid))~~ trauma cases that meet the injury severity score (ISS) (a summary rating system for traumatic anatomic injuries) of:

(i) Thirteen or greater for an adult trauma patient (a client age fifteen or older); or

(ii) Nine or greater for a pediatric trauma patient (a client younger than age fifteen).

(d) On a per-client basis in any DOH designated trauma service center.

(e) At a rate of two and one-half times the current ~~((MAA))~~ department fee-for-service rate for qualified trauma services, subject to the following:

(i) ~~((MAA))~~ The department monitors the increased payments from the TCF during each state fiscal year (SFY) and makes necessary adjustments to the rate to ensure that total payments from the TCF for the biennium will not exceed the legislative appropriation for that biennium.

(ii) Laboratory and pathology charges are not eligible for increased payments from the TCF. (See subsection (6)(b) of this section.)

(5) When a trauma case is transferred from one hospital to another, ~~((MAA))~~ the department makes increased payments from the TCF to physicians and other eligible clinical providers, according to the ISS score as follows:

(a) If the transferred case meets or exceeds the appropriate ISS threshold described in subsection (4)(c) of this section, eligible providers who furnish qualified trauma services in both the transferring and receiving hospitals are eligible for increased payments from the TCF.

(b) If the transferred case is below the ISS threshold described in subsection (4)(c) of this section, only the eligible providers who furnish qualified trauma services in the receiving hospital are eligible for increased payments from the TCF.

(6) ~~((MAA))~~ The department distributes increased payments from the TCF only:

(a) When eligible trauma claims are submitted with the appropriate trauma indicator within the timeframes specified by ~~((MAA))~~ the department; and

(b) On a per-claim basis. Each qualifying trauma service and/or procedure on the physician's claim or other clinical provider's claim is paid at ~~((MAA's))~~ the department's current fee-for-service rate, multiplied by an increased TCF payment rate that is based on the appropriate rate described in subsection (4)(e) of this section. Charges for laboratory and pathology services and/or procedures are not eligible for increased

payments from the TCF and are paid at ~~((MAA's))~~ the department's current fee-for-service rate.

(7) For purposes of the increased payments from the TCF to physicians and other eligible clinical providers, all of the following apply:

(a) ~~((MAA))~~ The department may consider a request for a claim adjustment submitted by a provider only if the claim is received by ~~((MAA))~~ the department within one year from the date of the initial trauma service;

(b) ~~((MAA))~~ The department does not allow any carry-over of liabilities for an increased payment from the TCF after a date specified by ~~((MAA))~~ the department as the last date to make adjustments to a trauma claim for an SFY. WAC 388-502-0150(7) does not apply in this case;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of increased payments from the TCF disbursed to providers by ~~((MAA))~~ the department in a biennium cannot exceed the amount appropriated by the legislature for that biennium. ~~((MAA))~~ The department has the authority to take whatever actions are needed to ensure ~~((MAA))~~ the department stays within the current TCF appropriation (see subsection (4)(e)(i) of this section).

WSR 05-20-051

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 30, 2005, 4:35 p.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: The department is revising the rules to change reimbursements paid to licensed providers. The rules will:

- Increase reimbursement rates for licensed/certified providers and DSHS contracted seasonal day camps.
- Repeal the payment of the infant bonus.

When effective, the permanent rule will supersede and replace emergency rules in effect for WAC 388-290-0200 and 388-290-0205.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-290-0250; and amending WAC 388-290-0180, 388-290-0190, 388-290-0200, and 388-290-0205.

Statutory Authority for Adoption: RCW 74.04.050, 74.12.340, 74.13.085.

Other Authority: ESSB 6090, section 207(3), chapter 518, Laws of 2005.

Adopted under notice filed as WSR 05-17-192 on August 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: Clearer language was added to WAC 388-290-0200 and 388-290-0205 regarding the ages licensed providers may receive subsidies for.

A final cost-benefit analysis is available by contacting Lisa Lind, 1009 College Street S.E., P.O. Box 45480, Olympia, WA 98504, phone (360) 725-4691, fax (360) 413-3482,

e-mail lindlm@dshs.wa.gov. No changes were made in the preliminary cost-benefit analysis, which will be final.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 1.

Date Adopted: September 28, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0180 When are the WCCC program subsidy rates in this chapter effective? DSHS child care subsidy rates in this chapter are effective on or after ~~((January 1, 2002))~~ November 1, 2005.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0190 What does the WCCC program pay for and when can the program pay more? (1) We may pay for:

(a) Basic child care hours, either full day, half day or hourly. We authorize:

(i) Full day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for five or more hours per day;

(ii) Half day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for less than five hours per day; and

(iii) Hourly child care for in-home/relative child care.

(b) A registration fee (under WAC 388-290-0245);

(c) A field trip fee (under WAC 388-290-0245); and

(d) ~~((An infant bonus (under WAC 388-290-0250); and~~

~~(e)))~~ Special needs care when the child has a documented need for higher level of care (under WAC 388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235).

(2) If care is not available within a reasonable distance at our daily rate, then we authorize the provider's usual daily rate.

(3) If care is over ten hours per day, and the provider's policy is to charge for these extra hours, then we authorize an additional amount of care.

~~((4) Refer to WAC 388-290-0270, 388-290-0271, and 388-290-0273 for when overpayments can be assessed to you or your provider.))~~

AMENDATORY SECTION (Amending WSR 04-08-021 [and 04-08-134], filed 3/29/04 [and 4/7/04], effective 5/28/04)

WAC 388-290-0200 What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps? (1) We pay the lesser of the following to a licensed or certified child care center or DSHS contracted seasonal day camp:

(a) The provider's usual daily rate for that child; or

(b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$((24.32))	\$((20.45))	\$((19.32))	\$((18.18))
	Half-Day	25.89	21.77	20.57	19.36
		\$((12.16))	\$((10.23))	\$((9.66))	\$((9.09))
		12.95	10.89	10.29	9.68
Spokane County	Full-Day	\$26.48	\$22.27	\$21.04	\$19.80
	Half-Day	\$13.25	\$11.14	\$10.53	\$9.90
Region 2	Full-Day	\$((24.55))	\$((20.50))	\$((19.00))	\$((16.82))
	Half-Day	26.14	21.83	20.23	17.91
		\$((12.27))	\$((10.25))	\$((9.50))	\$((8.44))
		13.07	10.92	10.12	8.96
Region 3	Full-Day	\$((32.50))	\$((27.09))	\$((23.41))	\$((22.73))
	Half-Day	34.60	28.84	24.92	24.20
		\$((16.25))	\$((13.55))	\$((11.70))	\$((11.36))
		17.30	14.42	12.46	12.10
Region 4	Full-Day	\$((37.82))	\$((31.59))	\$((26.50))	\$((23.86))
	Half-Day	40.27	33.63	28.21	25.40
		\$((18.94))	\$((15.80))	\$((13.25))	\$((11.93))
		20.14	16.82	14.11	12.70
Region 5	Full-Day	\$((27.73))	\$((23.86))	\$((21.00))	\$((18.64))
	Half-Day	29.52	25.40	22.36	19.85
		\$((13.86))	\$((11.93))	\$((10.50))	\$((9.32))
		14.76	12.70	11.18	9.93
Region 6	Full-Day	\$((27.27))	\$((23.41))	\$((20.45))	\$((20.00))
	Half-Day	29.03	24.92	21.77	21.29
		\$((13.64))	\$((11.70))	\$((10.23))	\$((10.00))
		14.52	12.46	10.89	10.65

(2) The child care center WAC 388-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor ~~((in order for a child care center))~~ to provide care for a ~~((thirteen year old or older child))~~ child outside the age listed on their license.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 04-08-021 [and 04-08-134], filed 3/29/04 [and 4/7/04], effective 5/28/04)

WAC 388-290-0205 What daily rates does DSHS pay for child care in a licensed or certified family home child care? (1) We pay the lesser of the following to a licensed or certified family home child care:

- (a) The provider's usual daily rate for that child; or
- (b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$(20.00)	\$(18.00)	\$(18.00)	\$(16.00)
	Half-Day	<u>21.29</u>	<u>19.16</u>	<u>19.16</u>	<u>17.04</u>
		\$(10.00)	\$(9.00)	\$(9.00)	\$(8.00)
		<u>10.65</u>	<u>9.58</u>	<u>9.58</u>	<u>8.52</u>
<u>Spokane County</u>	Full-Day	<u>\$21.78</u>	<u>\$19.60</u>	<u>\$19.60</u>	<u>\$17.43</u>
	Half-Day	<u>\$10.89</u>	<u>\$9.80</u>	<u>\$9.80</u>	<u>\$8.71</u>
Region 2	Full-Day	\$(20.00)	\$(19.00)	\$(17.00)	\$(17.00)
	Half-Day	<u>21.29</u>	<u>20.23</u>	<u>18.10</u>	<u>18.10</u>
		\$(10.00)	\$(9.50)	\$(8.50)	\$(8.50)
		<u>10.65</u>	<u>10.12</u>	<u>9.05</u>	<u>9.05</u>
Region 3	Full-Day	\$(29.00)	\$(25.00)	\$(22.00)	\$(20.00)
	Half-Day	<u>30.88</u>	<u>26.62</u>	<u>23.42</u>	<u>21.29</u>
		\$(14.50)	\$(12.50)	\$(11.00)	\$(10.00)
		<u>15.44</u>	<u>13.31</u>	<u>11.71</u>	<u>10.65</u>
Region 4	Full-Day	\$(30.00)	\$(29.67)	\$(25.00)	\$(24.00)
	Half-Day	<u>31.94</u>	<u>31.59</u>	<u>26.62</u>	<u>25.55</u>
		\$(15.00)	\$(14.83)	\$(12.50)	\$(12.00)
		<u>15.97</u>	<u>15.80</u>	<u>13.31</u>	<u>12.78</u>
Region 5	Full-Day	\$(22.00)	\$(20.00)	\$(19.00)	\$(17.00)
	Half-Day	<u>23.42</u>	<u>21.29</u>	<u>20.23</u>	<u>18.10</u>
		\$(11.00)	\$(10.00)	\$(9.50)	\$(8.50)
		<u>11.71</u>	<u>10.65</u>	<u>10.12</u>	<u>9.05</u>
Region 6	Full-Day	\$(22.00)	\$(20.00)	\$(20.00)	\$(19.00)
	Half-Day	<u>23.42</u>	<u>21.29</u>	<u>21.29</u>	<u>20.23</u>
		\$(11.00)	\$(10.00)	\$(10.00)	\$(9.50)
		<u>11.71</u>	<u>10.65</u>	<u>10.65</u>	<u>10.12</u>

(2) The family home child care WAC (~~388-155-010~~) 388-296-0020 and WAC 388-296-1350 allows providers to care for children from birth up to and including the day before their twelfth birthday. (~~In order for a family home provider to care for a twelve-year-old or older child,~~) The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license. If the provider has a waiver to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) We pay family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) We cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;

(b) The child's nonneedy or needy relative or that relative's spouse or live-in partner;

(c) The child's legal guardian or the guardian's spouse or live-in partner; or

(d) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(6) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region I rates apply to Spokane County.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-290-0250 When can WCCC pay a bonus for enrolling an infant?

Reviser's note: The typographical error in the above material occurred in the copy filed by the Department of Social and Health Services and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-20-055
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed October 3, 2005, 10:30 a.m., effective December 1, 2005]

Effective Date of Rule: December 1, 2005.

Purpose: The department recently adopted chapter 296-806 WAC, Machine safety; chapter 296-841 WAC, Respiratory hazards; and chapter 296-842 WAC, Respirators. This rule making made changes to several L&I safety and health standards, to update references throughout the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-54-51150 Respiratory protection, 296-56-60110 Respiratory protection, 296-78-665 Sanding machines, 296-78-71015 Tanks and chemicals, 296-78-84005 Dry kilns, 296-79-29007 Bleach plant, 296-155-17625 Employee information and training, 296-155-525 Cranes and derricks, 296-155-655 General protection requirements, 296-304-09007 Respiratory protection, 296-305-04001 Respiratory equipment protection, and 296-305-05503 Summary of training requirements.

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

Adopted under notice filed as WSR 05-07-125 on March 22, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 12, Repealed 0.

Date Adopted: October 3, 2005.

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-54-51150 Respiratory protection. The employer must provide respiratory protection when required by ~~((the general occupational health standards,))~~ chapter 296-842 WAC, Respirators.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-56-60110 Respiratory protection. The respiratory protection requirements of ~~((the general occupational health standards,))~~ chapter 296-842 WAC, Respirators, apply.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-78-665 Sanding machines. (1) Each belt sanding machine shall have both pulleys enclosed in such a manner as to guard the points where the belt runs onto the pulleys. The edges of the unused run of belt shall be enclosed or otherwise guarded from contact by employees.

(2) Each drum sanding machine shall be provided with a guard so arranged as to completely enclose the revolving drum except such portion required for the application of the material to be finished. Guards with hinges to facilitate the insertion of sandpaper may be installed. The exhaust hood may form part or all of this guard. When so used, the hood shall conform to the specifications as given under exhaust systems in WAC 296-78-710.

(3) All standard stationary sanding machines shall be provided with exhaust systems in conformity with the section of this code dealing with exhaust systems.

(4) All portable sanding machines shall be provided with means of removing excessive dust, or employees using equipment shall be provided with such necessary respiratory protective equipment as will conform to the requirements of ~~((the general occupational health standards,))~~ chapter 296-842 WAC, Respirators.

(5) The requirements of WAC ~~(([296-806-475 Sanding machines] [296-24-16533, general safety and health standards]))~~ 296-806-475, sanding machines, shall be applicable to sanding machines.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-78-71015 Tanks and chemicals. (1) All open vats and tanks into which workers may fall shall be guarded with standard railings or screen guards in all cases where such guarding is possible with regard to practical operation.

(2) Foundations of elevated tanks shall be accessible for inspections. When the tank platform is more than five feet above the ground a stairway or ladder shall be permanently attached.

(3) Every open tank over five feet in height shall be equipped with fixed standard ladders both inside and out, extending from the bottom to the rim of the tank arranged to be accessible to each other, so far as local conditions permit.

(4) The use of chemicals for treating of lumber for prevention of sap stain or mold or as preservatives, shall conform to the requirements of chapter 296-835 WAC, Dipping and coating operations (dip tanks).

(a) Storage, handling, and use of chemicals. Threshold limits. Employees shall not be exposed to airborne concentration of toxic dusts, vapors, mists or gases that exceed the threshold limit values set forth in chapter 296-62 WAC, Part H, and chapter ~~((296-62 WAC, Part E, general occupational health standards))~~ 296-841 WAC, Respiratory hazard.

(b) Protective equipment. The use of chemicals shall be controlled so as to protect employees from harmful exposure to toxic materials. Where necessary, employees shall be provided with and required to wear such protective equipment as will afford adequate protection against harmful exposure as required by WAC 296-800-160, and chapter 296-842 WAC, ~~((general occupational health standards))~~ Respirators.

(5)(a) Means shall be provided and used to collect any excess of chemicals used in treating lumber so as to protect workers from accidental contact with harmful concentrations of toxic chemicals or fumes.

(b) Dip tanks containing flammable or combustible liquids shall be constructed, maintained and used in accordance with chapter 296-835 WAC, Dipping and coating operations (dip tanks).

(c) An evacuation plan shall be developed and implemented for all employees working in the vicinity of dip tanks using flammable and/or combustible liquids. A copy of the plan shall be available at the establishment for inspection at all times. Every employee shall be made aware of the evacuation plan and know what to do in the event of an emergency and be evacuated in accordance with the plan. The plan shall be reviewed with employees at least quarterly and documented.

(d) When automatic foam, automatic carbon dioxide or automatic dry chemical extinguishing systems are used, an alarm device shall be activated to alert employees in the dip tank area before and during the activation of the system. The following combinations of extinguishment systems when used in conjunction with the evacuation plan as stated above will be acceptable in lieu of bottom drains:

(i) A dip tank cover with an automatic foam extinguishing system under the cover, or an automatic carbon dioxide system, or an automatic dry chemical extinguishing system, or an automatic water spray extinguishing system;

(ii) An automatic dry chemical extinguishing system with an automatic carbon dioxide system or a second automatic dry chemical extinguishing system or an automatic foam extinguishing system;

(iii) An automatic carbon dioxide system with a second automatic carbon dioxide system or an automatic foam extinguishing system.

(e) The automatic water spray extinguishing systems, automatic foam extinguishing systems, and dip tank covers shall conform with the requirements of chapter 296-835 WAC, Dipping and coating operations (dip tanks). The automatic carbon dioxide systems and dry chemical extinguishing system shall conform with the requirements of WAC 296-24-615 and 296-24-620.

(6) Where workers are engaged in the treating of lumber with chemicals or are required to handle lumber or other materials so treated, the workers shall be provided with, at no cost to the worker, and required to use such protective equipment as will provide complete protection against contact with toxic chemicals or fumes therefrom.

(7) Sanitation requirements. The requirements of WAC 296-800-220 and 296-800-230 (safety and health core rules), shall govern sanitation practices.

(8) The sides of steam vats and soaking pits unless otherwise guarded shall extend forty-two inches above the floor level. The floor adjacent thereto shall be of nonslip construction.

(9) Large steam vats or soaking pits, divided into sections, shall be provided with substantial walkways between each section, each walkway to be provided with standard railings which may be removable if necessary.

(10) Covers shall be removed only from that portion of the steaming vats on which workers are working and a portable railing shall be placed at this point to protect the operators.

(11) Workers shall not ride or step on logs in steam vats.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-78-84005 Dry kilns. (1) Transfer, kiln and dolly tracks shall be properly maintained at all times and shall have a grade of not more than one and one-fourth percent. Bumpers or stops shall be installed at the ends of all tracks capable of stopping a normal load for which the track is installed. A means shall be provided for chocking or blocking cars.

(2) Doors.

(a) Main kiln doors. Main kiln doors shall be provided with a method of holding them open while kiln is being loaded.

(b) Counterweights on vertical lift doors shall be boxed or otherwise guarded.

(c) Means shall be provided to firmly secure main doors, when they are disengaged from carriers and hangers, to prevent toppling.

(3) Kilns whose operation requires inside inspection shall be maintained with not less than eighteen inches clearance between loaded cars and the walls of the kiln. The requirements for personal protective equipment specified in

WAC 296-800-160, safety and health core rules, and chapter 296-842 WAC, (~~general occupational health standards~~) Respirators, shall be complied with.

(4) Kiln loads shall be equipped or arranged for easy attachment and detachment of transfer cables. Means for stopping kiln cars shall be available at all times.

(5) Cars shall not be moved until tracks are clear and workers are out of the bight of transfer lines.

(6) When kiln or dolly loads of lumber are permitted to coast through or adjacent to any work area, audible warning shall be given.

(7) Stickers shall not be allowed to protrude more than two inches from the sides of kiln stacks.

(8) Yards and storage areas shall be kept reasonably free of debris and unnecessary obstruction. Warning signs shall be conspicuously posted wherever there is danger from moving vehicles or equipment.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-79-29007 Bleach plant. (1) Work areas used for preparation and processing of bleaching mixtures must be equipped with properly designed exhaust ventilation systems capable of clearing the area of toxic gases. See chapters 296-62 and 296-841 WAC(~~(Part L)~~).

(2) Bleaching containers, such as cells, towers, etc., except the Bellmer type, must be completely covered on the top, with the exception of one small opening large enough to allow filling but too small to admit a person.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-155-17625 Employee information and training. (1) General.

(a) The employer shall communicate information concerning lead hazards according to the requirements of WISHA's Hazard Communication Standard for the construction industry, chapter 296-800 WAC, including but not limited to the requirements concerning warning signs and labels, material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(b) For all employees who are subject to exposure to lead at or above the action level on any day or who are subject to exposure to lead compounds which may cause skin or eye irritation (e.g., lead arsenate, lead azide), the employer shall provide a training program in accordance with subsection (2) of this section and assure employee participation.

(c) The employer shall provide the training program as initial training prior to the time of job assignment or prior to the start up date for this requirement, whichever comes last.

(d) The employer shall also provide the training program at least annually for each employee who is subject to lead exposure at or above the action level on any day.

(2) Training program. The employer shall assure that each employee is trained in the following:

(a) The content of this standard and its appendices;

(b) The specific nature of the operations which could result in exposure to lead above the action level;

(c) The training requirements for respiratory protection as required by ((chapter 296-62 WAC, Part E (see)) WAC 296-842-110, 296-842-19005, and 296-842-16005());

(d) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females and hazards to the fetus and additional precautions for employees who are pregnant);

(e) The engineering controls and work practices associated with the employee's job assignment including training of employees to follow relevant good work practices described in Appendix B, WAC 296-155-17652;

(f) The contents of any compliance plan in effect;

(g) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician; and

(h) The employee's right of access to records under Part B, chapter 296-62 WAC and chapter 296-800 WAC.

(3) Access to information and training materials.

(a) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(b) The employer shall provide, upon request, all materials relating to the employee information and training program to affected employees and their designated representatives, and the director.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-155-525 Cranes and derricks. (1) Definitions applicable to this part:

Accessory - a secondary part or assembly of parts which contributes to the overall function and usefulness of a machine.

Administrative or regulatory authority - a governmental agency, or the employer in the absence of governmental jurisdiction.

Angle indicator (boom) - an accessory which measures the angle of the boom to the horizontal.

Appointed - assigned specific responsibilities by the employer or the employer's representative.

Authorized person - means a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

Auxiliary hoist - a secondary hoist rope system used either in conjunction with, or independently of, the main hoist system.

Axis of rotation - the vertical axis around which the crane superstructure rotates.

Axle - the shaft or spindle with which or about which a wheel rotates. On wheel-mounted cranes it refers to a type of axle assembly including housings, gearing, differential, bearings, and mounting appurtenances.

Axle (bogie) - two or more axles mounted in tandem in a frame so as to divide the load between the axles and permit vertical oscillation of the wheels.

Ballast - weight used to supplement the weight of the machine in providing stability for lifting working loads (the term **ballast** is normally associated with locomotive cranes).

Base, anchor bolt - a crane base that is bolted to a footing.

Base, expendable - for static-mounting cranes, a style of bottom mast section or member that is cast into a concrete footing block; all or part of this component is lost to future installations.

Base, fixed - a crane base that does not travel. It may be expendable, knee braced, or anchor bolted.

Base (mounting) - the traveling base on which the rotating superstructure of a locomotive or crawler crane is mounted.

Base, tower crane - the lowermost supporting component of the crane.

Base, travel - a crane base that is a ballasted platform mounted on trucks that ride along rails.

Boom (crane) - a member hinged at the rotating superstructure and used for supporting the existing tackle.

Boom angle - the angle above or below horizontal of the longitudinal axis of the base boom section.

Boom hoist mechanism - means for supporting the boom and controlling the boom angle.

Boom point - the outer extremity of the crane boom, containing the hoist sheave assembly.

Boom point sheave assembly - an assembly of sheaves and pin built as an integral part of the boom point.

Boom stop - a device used to limit the angle of the boom at the highest recommended position.

Brake - a device used for retarding or stopping motion.

Brace, tower - a structural attachment placed between a crane tower and an adjacent structure to pass loads to the adjacent structure and permit the crane to be erected to greater than free standing height.

Buffer - an energy absorbing device for reducing impact when a moving crane or trolley reaches the end of its permitted travel.

Cab - a housing which covers the rotating superstructure machinery, or the operator's or driver's station.

Climbing frame - a frame used with climbing cranes to transmit operational and climbing reactions to the host building frame.

Climbing ladder - a steel member with crossbars (used in parts) suspended from a climbing frame and used as jacking support points when some cranes climb.

Clutch - a means for engagement or disengagement of power.

Commercial truck vehicle - a commercial motor vehicle designed primarily for the transportation of property in connection with business and industry.

Counterweight - weight used to supplement the weight of the machine in providing stability for lifting working loads.

Counterweight jib - a horizontal member of a crane on which the counterweights and usually the hoisting machinery are mounted.

Crane carrier - the undercarriage of a wheel-mounted crane specifically designed for transporting the rotating crane superstructure. It may or may not provide its own travel mechanism. It is distinguished from a commercial truck vehicle in that it is not designed to transport personnel, materials, or equipment other than the crane-rotating superstructure.

Cross-over points - in multiple layer spooling of rope on a drum, those points of rope contact where the rope crosses the preceding rope layer.

Designated - selected or assigned by the employer or the employer's representative as being competent to perform specific duties.

Drum - the cylindrical member around which a rope is wound for lifting and lowering the load or boom.

Dynamic (loading) - loads introduced into the machine or its components due to accelerating or decelerating forces.

Flange point - a point of contact between rope and drum flange where the rope changes layers.

Free standing height - that height of a crane which is supported by the tower (mast) alone without assistance from braces, guys, or other means.

Gage, track - the horizontal distance between two rails measured perpendicular to the direction of travel.

Gantry (A-frame) - a structural frame, extending above the superstructure, to which the boom support ropes are reeved.

High strength (traction) bolts - high strength tensile bolts used in the assembly of crane sections. The bolts are installed in tension by torquing or other means at a level greater than that produced by in- or out-of-service loads for the purpose of reducing the likelihood of bolt fatigue failure.

Hoist mechanism - a hoist drum and rope reeving system used for lifting and lowering loads.

Jib - an extension attached to the boom point to provide added boom length for lifting specified loads. The jib may be in line with the boom or offset to various angles in the vertical plane of the boom.

Jib backstop - a device which will restrain the jib from turning over backward.

Job site - work area defined by the construction contract.

Limiting device - a mechanical device which is operated by some part of a power driven machine or equipment to control loads or motions of the machine or equipment.

Load (working) - the external load in pounds (kilograms) applied to the crane, including the weight of load-attaching equipment such as lower load block, shackles, and slings.

Load block, lower - the assembly of hook or shackle, swivel, sheaves, pins, and frame suspended by the hoisting ropes.

Load block, upper - the assembly of shackle, swivel, sheaves, pins, and frame suspended from the boom point.

Load ratings - crane ratings in pounds (kilograms) established by the manufacturer.

Mast (boom) - a frame hinged at or near the boom hinge for use in connection with supporting a boom. The head of the mast is usually supported and raised or lowered by the boom hoist ropes.

Mast (jib) - a frame hinged at or near the boom point for use in connection with supporting a jib.

Normal operating conditions.

Cab- or station-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices on the crane, and no other persons except those appointed are to be on the crane.

Ground- or floor-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices that are mounted to the crane but operated with the operator off the crane, and no other persons except those appointed are to be on the crane.

Remote-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices that are mounted to any part of the crane, and no other persons except those appointed are to be on the crane.

Out-of-service - the condition of a crane when unloaded, without power and with the controls unattended and prepared to endure winds above the in-service level.

Outriggers - extendable or fixed members attached to the mounting base, which rest on supports at the outer ends used to support the crane.

Pawl (dog) - a device for positively holding a member against motion in one or more directions.

Payload - that load or loads being transported by the commercial truck chassis from place to place.

Pendant - a rope or strand of specified length with fixed end connections.

Pitch diameter - the diameter of a sheave or rope drum measured at the center line of the rope.

Power-controlled lowering - a system or device in the power train, other than the load hoist brake, which can control the lowering rate of speed of the load hoist mechanism.

Qualified person - a person who, by possession of a recognized degree or certificate of professional standing, or who, by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter and work.

Radius (load) - the horizontal distance from a projection of the axis of rotation to the base of the crane, before loading, to the center of the vertical hoist line or tackle with load applied.

Rail clamp - a tong-like metal device mounted on a locomotive crane car, which can be connected to the track.

Reeving - a rope system in which the rope travels around drums and sheaves.

Remote control station - a location, not on the crane, from which the operator can control all the crane movements.

Repetitive pickup point - when operating on a short cycle operation, the rope being used on a single layer and being spooled repetitively over a short portion of the drum.

Rope - refers to wire rope unless otherwise specified.

Rotation resistant rope - a wire rope consisting of an inner layer of strand laid in one direction covered by a layer of strand laid in the opposite direction. This has the effect of

counteracting torque by reducing the tendency of the finished rope to rotate.

Running rope - a rope which travels around sheaves or drums.

Shall - this word indicates that the rule is mandatory and must be followed.

Service, light - service that involves irregular operation with loads generally about one-half or less of the rated load; a service crane at a storage yard or building site would be an example.

Service, normal - service that involves operating occasionally at rated load but normally at less than eighty-five percent of the rated load and not more than ten lift cycles per hour except for isolated instances; a crane used for concrete placement at a building site would be an example.

Service, heavy - service that involves operating at eighty-five percent to one hundred percent of the rated load or in excess of ten lift cycles per hour as a regular specified procedure; some cranes operating at material yards or in industrial applications may fall into this category.

Sheave - a grooved wheel or pulley used with a rope to change the direction and point of application of a pulling force.

Should - this word indicates that the rule is a recommendation, the advisability of which depends on the facts in each situation.

Side loading - a load applied to an angle to the vertical plane of the boom.

Stabilizer - stabilizers are extendable or fixed members attached to the mounting base to increase the stability of the crane, but which may not have the capability of relieving all of the weight from wheels or tracks.

Standby crane - a crane which is not in regular service but which is used occasionally or intermittently as required.

Standing (guy) rope - a supporting rope which maintains a constant distance between the points of attachment to the two components connected by the rope.

Structural competence - the ability of the machine and its components to withstand the stresses imposed by applied loads.

Superstructure - the rotating upper frame structure of the machine and the operating machinery mounted thereon.

Swing - rotation of the superstructure for movement of loads in a horizontal direction about the axis of rotation.

Swing mechanism - the machinery involved in providing rotation of the superstructure.

Swivel - a load carrying member with thrust bearings to permit rotation under load in a plane perpendicular to the direction of the load.

Swiveling - the rotation of the load attachment portion (hook or shackle) of a load block (lower) or hook assembly about its axis of suspension in relation to the load line(s).

Tackle - an assembly of ropes and sheaves arranged for lifting, lowering, or pulling.

Telescoping boom - consists of a base boom from which one or more boom sections are telescoped for additional length.

Telescoping (tower crane) - a process whereby the height of a traveling or fixed base crane is increased typically by raising the inner tower and then adding sections at the top

of the outer tower; there are also cranes that are telescoped by adding to the inner tower from below.

Tower (mast) - a vertical structural frame consisting of columns and bracing capable of supporting an upperstructure with its working and dynamic loads and transmitting them to the supporting surface or structure.

Traction (high strength) bolts - see high strength bolts.

Transit - the moving or transporting of a crane from one job site to another.

Travel - the function of the machine moving under its own power from one location to another on a job site.

Trolley - the device that travels along the load jib and contains the upper load block.

Two-blocking - the condition in which the lower load block or hook assembly comes in contact with the upper load block or boom point sheave assembly.

Weathervaning - wind induced rotation of a crane upperstructure, when out-of-service, to expose minimal surface area to the wind.

Wedge - a tapered wood or steel device used to provide stability to cranes during use as a climber. When the wedges are tightened against the four main legs of the tower, they convert overturning moments into horizontal forces to be resisted by the floor framing or slab.

Wheel base - the distance between centers of front and rear axles. For a multiple axle assembly the axle center for wheel base measurement is taken as the midpoint of the assembly.

Whipline (runner or auxiliary) - a secondary rope system usually of lighter load capacity than that provided by the main rope system.

Winch head - a power driven spool for handling of loads by means of friction between fiber or wire rope and the spool.

(2) General requirements.

(a) The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any and all cranes and derricks. Where manufacturer's specifications are not available the limitations assigned to the equipment shall be based on the determinations of a qualified engineer, competent in this field and such determinations will be appropriately documented and recorded. Attachments used with cranes shall not exceed the capacity, rating, or scope recommended by the manufacturer.

(b) Rated load capacities, and recommended operating speeds, and special hazard warnings, or instruction, shall be conspicuously posted on all equipment. Instructions or warnings shall be visible to the operator while at the control station.

(c) Hand signals to crane and derrick operators shall be those prescribed by the applicable ANSI standard for the type of crane in use. An illustration of the signals shall be posted at the job site.

(d) The employer shall designate a competent person who shall inspect all machinery and equipment prior to each use, and periodically during use to make sure it is in safe operating condition. Any deficiencies shall be repaired, or defective parts replaced, before continued use.

(e) A thorough, annual inspection of the hoisting machinery shall be made by a competent person, or by a government or private agency recognized by the department. The

employer shall maintain a permanent record of the dates and results of all inspections for each hoisting machine and piece of equipment.

(f) A tag line or guide rope shall be used on all loads that swing freely. Guide ropes or tag lines shall be held by experienced persons.

(g) Care shall be taken to guard against injury to workers, or damage to scaffolds or buildings, from swinging loads.

(h) The operator shall avoid carrying loads over people.

(i) When work is stopped or when the derrick is not in operation, the boom shall be lowered to a horizontal position or tied in place to prevent it whipping with the wind or other external force.

(j) Only authorized personnel shall make sling hitches on loads.

(k) Workers shall not be allowed to ride on loads handled by derricks.

(l) Operators shall observe signals only from duly authorized persons. Under no circumstances shall a load be moved until the signal is received from authorized personnel.

(m) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, or other reciprocating, rotating, or other moving parts or equipment shall be guarded if such parts are exposed to contact by employees, or otherwise create a hazard. Guarding shall meet the requirements of chapter ((~~296-806 WAC, Machine safety~~) [~~296-24 WAC~~]) 296-806 WAC, Machine safety.

(n) A minimum distance of thirty inches clearance shall be maintained between the swing radius of the greatest extension of the crane superstructure or counterweights and a stationary object, including the crane itself, while the crane is in operation. When this clearance cannot be maintained, suitable barricades or safeguards shall be used to isolate the pinch point hazard area.

(o) All exhaust pipes shall be guarded or insulated where contact by employees, in the performance of normal duties, is possible.

(3) Additional requirements.

(a) Whenever internal combustion engine powered equipment exhausts in enclosed spaces, tests shall be made and recorded to see that employees are not exposed to unsafe concentrations of toxic gases or oxygen deficient atmospheres. (See chapter 296-62 WAC, the general occupational health standards and chapter 296-841 WAC, identifying and controlling respiratory hazards.)

(b) All cab glazing shall be safety glazing material. Windows shall be provided in the front and on both sides of the cab or operator's compartment with visibility forward and to either side. Visibility forward shall include a vertical range adequate to cover the boom point at all times. The front window may have a section which can be readily removed or held open, if desired. If the section is of the type held in the open position, it shall be secured to prevent inadvertent closure. A windshield wiper should be provided on the front window.

(c)(i) Where necessary for rigging or service requirements, a ladder or steps shall be provided to give access to a cab roof.

(ii) On cranes, guardrails, handholds and steps shall be provided for easy access to the car and cab in accordance with chapter 296-155 WAC, Part C-1 and Part J.

(iii) Platforms and walkways shall have anti-skid surfaces.

(d) Fuel tank filler pipe shall be located in such a position, or protected in such manner, as to not allow spill or overflow to run onto the engine, exhaust, or electrical equipment of any machine being fueled.

(i) An accessible fire extinguisher of 5BC rating, or higher, shall be available at all operator stations or cabs of equipment.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(ii) All fuels shall be transported, stored, and handled to meet the rules of Part D of this chapter. When fuel is transported by vehicles on public highways, department of transportation rules concerning such vehicular transportation are considered applicable.

(e) Except where electrical distribution and transmission lines have been deenergized and visibly grounded at point of work or where insulating barriers, not a part of or an attachment to the equipment or machinery, have been erected to prevent physical contact with the lines, equipment or machines shall be operated proximate to power lines only in accordance with the following:

(i) For lines rated 50 kV. or below, minimum clearance between the lines and any part of the crane or load shall be 10 feet;

(ii) For lines rated over 50 kV., minimum clearance between the lines and any part of the crane or load shall be 10 feet plus 0.4 inch for each 1 kV. over 50 kV., or twice the length of the line insulator, but never less than 10 feet;

(iii) In transit with no load and boom lowered, the equipment clearance shall be a minimum of 4 feet for voltages less than 50 kV., and 10 feet for voltages over 50 kV. up to and including 345 kV., and 16 feet for voltages up to and including 750 kV;

(iv) A person shall be designated to observe clearance of the equipment and give timely warning to insure that the required separation is maintained for all operations where it is difficult for the operator to maintain the desired clearance by visual means;

(v) Cage-type boom guards, insulating links, or proximity warning devices may be used on cranes, but the use of such devices shall not alter the requirements of any other regulation of this part even if such device is required by law or regulation;

(vi) Any overhead wire shall be considered to be an energized line unless and until the person owning such line or the electrical utility authorities indicate that it is not an energized line and it has been visibly grounded;

(vii) Prior to work near transmitter tower where an electrical charge can be induced in the equipment or materials being handled, the transmitter shall be deenergized or tests shall be made to determine if electrical charge is induced on the crane.

(f) The following precautions shall be taken when necessary to dissipate induced voltage:

(i) The equipment shall be provided with an electrical ground directly to the upper rotating structure supporting the boom; and

(ii) Ground jumper cables shall be attached to materials being handled by boom equipment when electrical charge is induced while working near energized transmitters. Crews shall be provided with nonconductive poles having large alligator clips or other similar protection to attach the ground cable to the load.

(iii) Combustible and flammable materials shall be removed from the immediate area prior to operations.

(g) No modifications or additions which affect the capacity or safe operation of the equipment shall be made by the employer without the manufacturer's or a qualified engineer's written approval. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals, shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

(h) The employer shall comply with Power Crane and Shovel Association, Mobile Hydraulic Crane Standard No. 2.

(i) Sideboom cranes mounted on wheel or crawler tractors shall meet the requirements of SAE J743a-1964.

(4) Crawler, locomotive, and truck cranes.

(a) All jibs shall have positive stops to prevent their movement of more than 5° above the straight line of the jib and boom on conventional type crane booms. The use of cable type belly slings does not constitute compliance with this standard.

(b) All crawler, truck or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5-1989, Safety Code for Crawler, Locomotive and Truck Cranes.

(5) Tower cranes.

(a) Tower cranes shall be erected, jumped and dismantled under the immediate supervision of a competent person, designated by the employer.

(b) Tower cranes shall be erected, maintained and used in accordance with the manufacturer's specifications, recommendations and procedures. All modifications shall be approved by the manufacturer and engineered by a professional engineer. The safety factors shall not be reduced by any modifications. The crane plates and charts shall be changed to reflect any modifications made.

(c) A professional engineer shall certify that the crane foundations and underlying soil are adequate support for the tower crane with its maximum overturning movement.

(d) Tower cranes shall be positioned whereby they can swing 360° without either the counterweight or jib striking any building, structure or other object, except:

(i) If the crane can strike an object or another crane, suitable limit switches shall be installed which will prohibit contact with such objects, or;

(ii) Direct voice communications shall be established between any operator of the tower crane(s) involved and a signalperson so stationed where the boom and/or counterweight movement, and the object with which it may contact can be observed so that the operator(s) can be warned of imminent danger.

(iii) A secondary means of positive communications shall be established as a back-up for possible direct voice communication failure.

(iv) Radio communication systems without tone coded squelch are prohibited. Citizens band radios shall not be used as a means of communications for tower cranes.

(e) Prior to installing a climbing tower crane within an existing building or new construction, a structural engineer shall certify that the building is designed to withstand the torque and floor loading created by the crane to be installed.

(f) Tower cranes erected on a new foundation shall be tested in accordance with ANSI B30.3-1990 Chapter 3-1.

(i) The test shall consist of suspending a load of not less than 110% of the rated capacity for 15 minutes. The load shall be suspended from the furthest point of the length of boom (jib) to be used. The results of this test shall be within the manufacturer's recommendations and/or specifications.

(ii) A record of each test shall be made and signed by the person responsible for conducting the test. Such records shall be maintained on the construction site for the duration of the construction work for which it was erected and subsequently made a part of the firm's permanent equipment records. Records shall be made available to authorized representatives of the department, upon request.

(g) A capacity chart shall be furnished by each crane manufacturer which shall include a full and complete range of crane load ratings at all stated operating radii for each allowable speed and each recommended counterweight load.

(i) Such chart shall be posted in the operator's cab or at the remote control stand in use. In lieu of the chart at the remote control stand, a minimum of two weight capacity signs shall be affixed to the jib or boom.

(ii) The chart shall be visible and readable to the operator while at the normal operating position.

(h) Operating controls shall be properly marked to indicate the function of the controls in each position.

(i) An operating and maintenance manual written in the English language shall be provided with each tower crane.

(j) Limit switches shall be installed and shall be kept properly adjusted. They shall be protected or isolated in a manner which will prevent unauthorized tampering. Limit switches shall provide the following functions:

(i) Safely limit the travel of the trolley to prevent it from hitting the outer end of the jib.

(ii) Limit the upward travel of the load block to prevent two-blocking.

(iii) Lower over travel limiting devices shall be provided for all load hoists where the hook area is not visible to the operator.

(iv) Limit the load being lifted in a manner whereby no more than 110% of the maximum rated load can be lifted or moved.

(k) The crane shall not be used to pull vehicles of any type, remove piling, loosen form work, pull away loads which are attached to the ground or walls, or for any operation other than the proper handling of freely suspended loads.

(l) When the operator may be exposed to the hazard of falling objects, the tower crane cab and/or remote control station shall have adequate overhead protection.

(m) The operator shall be protected from the weather. If enclosed cabs are provided they shall provide clear visibility in all directions and glass shall be approved safety glass or the equivalent.

(n) An approved and safe means shall be provided for access to operator's cab and machinery platform.

(o) When necessary for inspection or maintenance purposes, ladders, walkways with railing or other devices shall be provided.

(p) Each tower crane shall be provided with a slewing brake capable of preventing the jib or boom from rotating in either direction and stopping the rotation of the jib or boom while loaded, when desired. Such brake shall have a holding device which, when set, will hold the jib or boom in a fixed location without additional attention of the operator. When the crane is out of operation, the jib or boom shall be pointed downwind and the slewing brake shall be released so as to permit the jib or boom to weathervane, providing the jib or boom has a clear 360 degree rotation. Where a 360 degree rotation is not provided, the jib or boom shall be pointed downwind from the prevailing wind and the slewing brake set.

(q) Each tower crane shall be provided with a braking system on the trolley capable of stopping and holding the trolley in any desired position while carrying a maximum load. This brake shall be capable of being locked in a fixed location without additional attention of the operator. An automatic brake or device shall be installed which will immediately stop and lock the trolley in position in the event of a breakage of the trolley rope.

(r) All electrical equipment shall be properly grounded and protection shall be provided against lightning.

(s) When the operator is actually operating the crane, the operator shall remain in a stationary position.

(t) All crane brakes shall automatically set in event of power failure. Swing brakes shall also function in this manner or be capable of being set manually.

(u) Climbing jack systems used for raising a tower crane shall be equipped with over-pressure relief valves, direct-reading pressure gauges, and pilot-operated hydraulic check valves installed in a manner which will prevent jack from retracting should a hydraulic line or fitting rupture or fail.

(v) During periods of high winds or weather affecting visibility, i.e., fog, etc., only loads shall be handled that are consistent with good safety practices. Good safety practices shall be mutually agreed upon by the operator and the person in charge of the construction job, with due consideration given to manufacturer's specifications and recommendations.

(w) Counterweights shall be securely fastened in place and shall not exceed the weight as recommended by the manufacturer for the length of jib being used. However, an amount of counterweight as recommended by the manufacturer shall be used.

(x) Tower cranes shall be inspected and maintained in accordance with the manufacturer's recommendations or more frequently if there is reason to suspect a possible defect or weakening of any portion of the structure or equipment.

(y) Guy wires, wedges, braces or other supports shall be inspected at the beginning and at midpoint of each working shift to ascertain that they are functioning as intended.

(6) Additional tower crane requirements.

(a) An approved method must be instituted for transmitting signals to the operator. Standard hand signals for crane operations must be used, whenever possible; however, if conditions are such that hand signals are ineffective, radio-controlled or electric-whistle signal or two-way voice communication must be used. (See WAC 296-155-525 (5)(d).)

(b) Tower cranes shall not be erected or raised when the wind velocity at the worksite exceeds 20 m.p.h. or that specified by the manufacturer.

(c) Tower crane operators shall be trained and experienced in tower crane operations; however, for gaining experience, persons may operate the tower crane if under the immediate supervision of an experienced operator.

(d) Adequate clearance shall be maintained between moving and rotating structures of the crane and fixed objects to allow the passage of employees without harm.

(e) Employees required to perform duties on the horizontal boom of hammerhead tower cranes shall be protected against falling by guardrails or by a full body harness and lanyards attached to crane or to lifelines in conformance with Part C-1 of this chapter.

(f) Buffers shall be provided at both ends of travel of the trolley.

(g) Cranes mounted on rail tracks shall be equipped with limit switches limiting the travel of the crane on the track and stops or buffers at each end of the tracks.

(h) All hammerhead tower cranes in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, inspection, and operation as prescribed by the manufacturer.

(i) Access ladders inside the telescoping sections of tower cranes are exempt from those sections of the safety standards pertaining to cleat length and cleat spacing, but shall conform to manufacturer's recommendations and specifications.

(7) Overhead and gantry cranes.

(a) The rated load of the crane shall be plainly marked on each side of the crane, and if the crane has more than one hoisting unit, each hoist shall have its rated load marked on it or its load block, and this marking shall be clearly legible from the ground or floor.

(b) Bridge trucks shall be equipped with sweeps which extend below the top of the rail and project in front of the truck wheels.

(c) Except for floor-operated cranes, a gong or other effective audible warning signal shall be provided for each crane equipped with a power traveling mechanism.

(d) All overhead and gantry cranes in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, inspection, and operation as prescribed in ANSI B30.2.0-1990, Safety Code for Overhead and Gantry Cranes.

(8) Derricks. All derricks in use shall meet the applicable requirements for design, construction, installation, inspection, testing, maintenance, and operation as prescribed in American National Standard Institute B30.6-1990, Safety Code for Derricks.

(9) Floating cranes and derricks.

(a) Mobile cranes mounted on barges.

(i) When a mobile crane is mounted on a barge, the rated load of the crane shall not exceed the original capacity specified by the manufacturer.

(ii) A load rating chart, with clearly legible letters and figures, shall be provided with each crane, and securely fixed at a location easily visible to the operator.

(iii) When load ratings are reduced to stay within the limits for list of the barge with a crane mounted on it, a new load rating chart shall be provided.

(iv) Mobile cranes on barges shall be positively secured.

(b) Permanently mounted floating cranes and derricks.

(i) When cranes and derricks are permanently installed on a barge, the capacity and limitations of use shall be based on competent design criteria.

(ii) A load rating chart with clearly legible letters and figures shall be provided and securely fixed at a location easily visible to the operator.

(iii) Floating cranes and floating derricks in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, and operation as prescribed by the manufacturer.

(c) Protection of employees working on barges. The employer shall comply with the applicable requirements for protection of employees as specified in WAC 296-155-630.

(10) Mobile cranes and excavation machines.

(a) In all power driven shovel operations the person in charge shall issue instructions necessary to prevent accidents, to detect and correct unsafe acts and dangerous conditions, and to enforce all safety rules and regulations.

The person in charge shall also issue instructions on the proper method of using tools and handling material.

(b) Where the ground is soft or uneven, timbering and planking shall be used to provide firm foundation and distribute the load.

(c) In case of a breakdown, the shovel shall be moved away from the foot of the slope before repairs are made.

(d) All persons shall keep away from the range of the shovel's swing and shall not be permitted to stand back of the shovel or in line with the swing of the dipper during operation or moving of shovel.

(e) Unauthorized persons shall not be allowed on the shovel during operations, and the operator shall not converse with other persons while operating machine.

(f) The shovel dipper shall rest on the ground or on blocking during shut down periods.

(g) Shovels shall be inspected daily and all defects promptly repaired.

(h) All rubber tired mobile cranes shall be equipped with outriggers and sufficient blocking to properly stabilize crane while operating.

(i) Rubber tired mobile cranes shall be equipped with rear view mirrors.

(j) Positive boom stops shall be provided on all mobile cranes of the wheel and crawler type.

(k) Length of a crane boom and amount of counterweight shall not exceed manufacturer's rated capacity for equipment involved; except on isolated cases where permission is granted by the department.

(l) On all cranes where wedge brackets are used as terminal connections, the proper size wedge shall be used.

(m) On all mobile cranes, the hoist and boom drums shall be provided with a positive operated pawl or dog which shall be used in addition to the brake to hold the load and boom when they are suspended. Counterweight operated dogs are prohibited.

(n) Oiling and greasing shall be done under safe conditions with machine at rest, except when motion of machine is necessary.

(o) All steps, running boards, and boom ladder shall be of substantial construction and in good repair at all times.

(p) Operators shall not leave the cab while master clutch is engaged.

(q) Fire extinguishers shall be readily accessible and within reach of operator at all times.

(r) All shovel and crane cabs shall be kept clean and free of excess oil and grease on floor and machinery. Oily and greasy rags shall be disposed of immediately after use and not allowed to accumulate.

(s) Tools shall not be left on the cab floor. Spare cans of oil or fuel, and spare parts, shall not be stored in cabs, except in approved racks provided for that purpose.

(t) Mats or planking shall be used in moving shovels or cranes over soft or uneven ground.

(u) Cranes or shovels setting on steep grades shall be securely blocked or secured with a tail hold.

(v) Smoking shall be prohibited while fueling or oiling machines.

(w) Gasoline powered motors shall be stopped during refueling.

(x) Handling of movable feed line (bologna) shall be accomplished with insulated hooks and lineman's rubber gloves.

(y) Where cables cross roads they shall be elevated or placed in a trench.

(z) On all power shovels, including back-hoe types, of one-half cubic yard capacity or over, and on all dragline cranes or all-purpose cranes of the crawler or wheel type, two persons shall constitute the minimum working crew. It is mandatory that one be a qualified operator of the equipment in use. The job title of the other crew member may be oiler, rigger, signal person, or a laborer. The primary purpose of the second crew member is to signal the operator when the operator's vision is impaired or obscured and to be on-hand in case of emergency.

(i) Second-crew persons shall be properly trained in their second-person required skills.

(ii) The second crew member shall be close enough to the machine in operation to be aware of any emergency, if one arises, and to assure the machine is operated with necessary and appropriate signals to the operator.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-155-655 General protection requirements.

(1) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(2) Underground installations.

(a) The location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be located prior to opening an excavation.

(b) Utility companies or owners shall be contacted within established or customary local response times, advised of the proposed work, and asked to locate the underground utility installation prior to the start of actual excavation.

(c) When excavation operations approach the location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

(d) While the excavation is open, underground installations shall be protected, supported, or removed as necessary to safeguard employees.

(3) Access and egress.

(a) Structural ramps.

(i) Structural ramps that are used solely by employees as a means of access or egress from excavations shall be designed by a competent person. Structural ramps used for access or egress of equipment shall be designed by a competent person qualified in structural design, and shall be constructed in accordance with the design.

(ii) Ramps and runways constructed of two or more structural members shall have the structural members connected together to prevent displacement.

(iii) Structural members used for ramps and runways shall be of uniform thickness.

(iv) Cleats or other appropriate means used to connect runway structural members shall be attached to the bottom of the runway or shall be attached in a manner to prevent tripping.

(v) Structural ramps used in lieu of steps shall be provided with cleats or other surface treatments on the top surface to prevent slipping.

(b) Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

(4) Exposure to vehicular traffic. Employees exposed to ~~((public))~~ vehicular traffic ~~((must) [shall])~~ shall be provided with ~~(())~~ and ~~((must) [shall])~~ shall wear ~~((high-visibility) [, warning vests or other suitable])~~ high-visibility garments ((meeting the requirements of WAC 296-155-200, General requirements for personal protective equipment (PPE)) [marked with or made of reflectorized or high-visibility material]) meeting the requirements of WAC 296-155-200, General requirements for personal protective equipment (PPE).

(5) Exposure to falling loads. No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling materials. Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped, in accordance with WAC 296-155-610 (2)(g), to provide adequate protection for the operator during loading and unloading operations.

(6) Warning system for mobile equipment. When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system shall be utilized such as barricades, hand or mechanical signals, or stop logs. If possible, the grade should be away from the excavation.

(7) Hazardous atmospheres.

(a) Testing and controls. In addition to the requirements set forth in parts B-1, C, and C-1 of this chapter (296-155 WAC) to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions, the following requirements shall apply:

(i) Where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby, the atmospheres in the excavation shall be tested before employees enter excavations greater than 4 feet (1.22 m) in depth.

(ii) Adequate precautions shall be taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen and other hazardous atmospheres. These precautions include providing proper respiratory protection or ventilation ~~((in accordance with parts B-1 and C of this chapter respectively))~~ in accordance with chapter 296-842 WAC.

(iii) Adequate precaution shall be taken such as providing ventilation, to prevent employee exposure to an atmosphere containing a concentration of a flammable gas in excess of 10 percent of the lower flammable limit of the gas.

(iv) When controls are used that are intended to reduce the level of atmospheric contaminants to acceptable levels, testing shall be conducted as often as necessary to ensure that the atmosphere remains safe.

(b) Emergency rescue equipment.

(i) Emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, shall be readily available where hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation. This equipment shall be attended when in use.

(ii) Employees entering bell-bottom pier holes, or other similar deep and confined footing excavations, shall wear a harness with a lifeline securely attached to it. The lifeline shall be separate from any line used to handle materials, and shall be individually attended at all times while the employee wearing the lifeline is in the excavation.

Note: See chapter 296-62 WAC, Part M for additional requirements applicable to confined space operations.

(8) Protection from hazards associated with water accumulation.

(a) Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect from cave-ins,

water removal to control the level of accumulating water, or use of a safety harness and lifeline.

(b) If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

(c) If excavation work interrupts the natural drainage of surface water (such as streams), diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering the excavation and to provide adequate drainage of the area adjacent to the excavation. Excavations subject to runoff from heavy rains will require an inspection by a competent person and compliance with subdivisions (a) and (b) of this subsection.

(9) Stability of adjacent structures.

(a) Where the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, support systems such as shoring, bracing, or underpinning shall be provided to ensure the stability of such structures for the protection of employees.

(b) Excavation below the level of the base or footing of any foundation or retaining wall that could be reasonably expected to pose a hazard to employees shall not be permitted except when:

(i) A support system, such as underpinning, is provided to ensure the safety of employees and the stability of the structure; or

(ii) The excavation is in stable rock; or

(iii) A registered professional engineer has approved the determination that the structure is sufficiently removed from the excavation so as to be unaffected by the excavation activity; or

(iv) A registered professional engineer has approved the determination that such excavation work will not pose a hazard to employees.

(c) Sidewalks, pavements, and appurtenant structure shall not be undermined unless a support system or another method of protection is provided to protect employees from the possible collapse of such structures.

(10) Protection of employees from loose rock or soil.

(a) Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

(b) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

(11) Inspections.

(a) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous

atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

(b) Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

(12) Fall protection.

(a) Walkways shall be provided where employees or equipment are required or permitted to cross over excavations. Guardrails which comply with chapter 296-155 WAC, Part K shall be provided where walkways are 4 feet or more above lower levels.

(b) Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits, shafts, etc., shall be barricaded or covered. Upon completion of exploration and similar operations, temporary wells, pits, shafts, etc., shall be backfilled.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-304-09007 Respiratory protection. The employer must provide respiratory protection that meets the requirements of ~~((the general occupational health standards;))~~ chapter 296-842 WAC, Respirators.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-305-04001 Respiratory equipment protection. (1) Fire fighter's self-contained breathing apparatus (SCBA) shall:

(a) Be pressure demand type (positive pressure);

(b) Operate in the positive pressure mode only;

(c) Have a minimum of thirty minutes service duration;

(d) Be NIOSH certified; and

(e) Meet the requirements of the 1992 or 1997 edition of NFPA, Standard on Open Circuit Self Contained Breathing Apparatus for Fire Fighters 1981.

(2) Closed circuit SCBA shall:

(a) Be positive pressure;

(b) Be NIOSH certified; and

(c) Have a minimum thirty-minute service duration.

(3) Members using SCBA's shall operate in teams of two or more.

(4) Except as otherwise provided in this chapter, fire departments shall adopt, maintain and implement a written respiratory protection program that addresses the requirements of chapter 296-842 WAC, ~~((Respiratory protection))~~ Respirators and Part I-1, Asbestos, Tremolite, Anthophyllite, and Actinolite. This includes program administration, medical limitations, equipment limitations, equipment selection, inspection, use, maintenance, training, fit testing procedures, air quality, and program evaluation.

Note: Additional information on respirators and respirator usage can be found in ANSI Z88.2 - American National Standard for Respiratory Protection; ANSI Z88.5 - Practices for Respiratory Protection for Fire Service; various NFPA publications (1981, 1404, 1500, etc.), and the Washington State Fire Service Training Program for respiratory training and usage.

(5) When fire departments purchase compressed breathing air from a vendor, the fire department shall require the vendor to provide certification and documentation of breathing air quality as specified in subsection (21) of this section and in chapter 296-842 WAC.

(6) When the fire department makes its own breathing air or uses vendor purchased breathing air, the air quality from compressors, cascade systems cylinders, shall be tested at least quarterly as specified in subsection (21) of this section.

(7) Fit testing shall be conducted in accordance with this section and chapter 296-842 WAC, (~~Respiratory protection~~) Respirators.

(a) Each new member shall be tested before being permitted to use SCBA's in a hazardous atmosphere.

(b) Only fire fighters with a properly fitting facepiece shall be permitted by the fire department to function in a hazardous atmosphere with SCBA. (Reference WAC 296-842-18005.)

(c) Fit testing shall be repeated:

(i) At least once every twelve months.

(ii) Whenever there are changes in the type of SCBA or facepiece used.

(iii) Whenever there are significant physical changes in the user. Example: Weight change of ten percent or more, scarring of face seal area, dental changes, cosmetic surgery, or any other condition that may affect the fit of the facepiece seal.

(d) The fit testing is done only in a negative-pressure mode. If the facepiece is modified for fit testing, the modification shall not affect the normal fit of the device. Such modified devices shall only be used for fit testing.

(e) The fit test procedures and test exercises described in WAC 296-62-07162, Asbestos, Appendix C, shall be followed unless stated otherwise in this chapter.

(f) Respirator fit test records shall include:

(i) Written guidelines for the respirator fit testing program including pass/fail criteria;

(ii) Type of respirator tested including manufacturer, model, and size;

(iii) Type of fit test and instrumentation or equipment used;

(iv) Name or identification of test operator;

(v) Name of person tested;

(vi) Date of test; and

(vii) Results of test.

Note: Fire fighters should be issued individual facepieces.

(8) Facial hair, contact lenses, and eye and face protective devices.

(a) A negative pressure respirator, any self-contained breathing apparatus, or any respirator which is used in an atmosphere immediately dangerous to life or health (IDLH) equipped with a facepiece shall not be worn if facial hair

comes between the sealing periphery of the facepiece and the face or if facial hair interferes with the valve function.

(b) The wearer of a respirator shall not be allowed to wear contact lenses if the risk of eye damage is increased by their use.

(c) If a spectacle, goggle, or face shield must be worn with a facepiece, it shall be worn so as to not adversely affect the seal of the facepiece to the face. See WAC 296-62-07170(2).

(d) Straps or temple bars shall not pass between the seal or surface of the respirator and the user's face.

(9) At the end of suppression activities (to include fire overhaul) and before returning to quarters:

(a) Fire fighters shall be decontaminated prior to removal of respirators whenever fire fighting activities resulted in exposure to a hazardous substance.

(b) When exchanging air supply bottles during suppression or overhaul activities, reasonable precautions shall be taken to maintain uncontaminated atmosphere to the breathing zone and facepiece supply hose.

(10) Self-contained respiratory equipment shall be available and used by all fire fighters who enter into hazardous atmospheres during structural fire fighting activities.

(11) Positive pressure air line respirators may be used only for atmospheres other than IDLH and must be equipped with a five minute minimum capacity positive pressure escape bottle.

(a) If the service life of the auxiliary air supply is fifteen minutes or less it shall not be used for entry into an IDLH atmosphere but it may be used for escape purposes. The auxiliary air supply may be used for entry into an IDLH atmosphere only when the service life of the unit exceeds fifteen minutes and when not more than twenty percent of the noted air supply will be used during entry.

(b) The maximum length of hose for supplied air respirators is 300 feet (91 meters). Such hose shall be heavy duty nonkinking and NIOSH approved.

(12) Respirators shall be provided for, and shall be used by, all personnel working in areas where:

(a) The atmosphere is hazardous;

(b) The atmosphere is suspected of being hazardous; or

(c) The atmosphere may rapidly become hazardous;

(13) Anytime fire fighters are working inside a confined space, such persons shall be provided with SCBA or air line respirator with escape bottle, and shall use the equipment unless the safety of the atmosphere can be established by testing and continuous monitoring.

(14) Fire fighters using a properly functioning SCBA shall not compromise the protective integrity of the SCBA by removing the facepiece for any reason in hazardous atmospheres or in atmospheres where the quality of air is unknown.

(15) Fire fighters shall receive training for each type and manufacturer of respiratory equipment available for their use, the step-by-step procedure for donning the respirator and checking it for proper function. Required training shall include:

(a) Recognizing hazards that may be encountered;

(b) Understanding the components of the respirator;

(c) Understanding the safety features and limitations of the respirator; and

(d) Donning and doffing the respirator.

(16) After completing such training, each fire fighter shall practice at least quarterly, for each type and manufacture of respirator available for use, the step-by-step procedure for donning the respirator and checking it for proper function.

(17) Members shall be tested at least annually on the knowledge of respiratory protection equipment operation, safety, organizational policies and procedures, and facepiece seals, to the fire department's standard. Such records shall remain part of the member training file.

(18) Members shall be allowed to use only the make, model, and size respirator for which they have passed a fit test within the last twelve months.

(19) In cases where there is a reported failure of a respirator, it shall be removed from service, tagged and recorded as such, and tested before being returned to service.

(20) Fire fighters shall be thoroughly trained in accordance with the manufacturer's instructions on emergency procedures such as use of regulator bypass valve, corrective action for facepiece and breathing tube damage, and breathing directly from the regulator (where applicable).

(21) Compressed gaseous breathing air in the SCBA cylinder shall meet the requirements of ANSI/CGA G7.1 - Commodity Specification for Air, with a minimum air quality of grade D, as well as meeting a water vapor level of 24 ppm or less.

(22) SCBA cylinders shall be hydrostatically tested within the periods specified by the manufacturer and the applicable governmental agencies.

Additional reference: Chapter 296-842 WAC.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-305-05503 Summary of training requirements. (1) Training on noise must conform to chapter 296-817 WAC, Hearing loss prevention (noise), and WAC 296-305-02005.

(2) Training on medical procedures shall conform to WAC 296-305-02501.

(3) Training on respiratory equipment shall conform to chapter 296-842 WAC, (~~Respiratory protection~~) Respirators, and WAC 296-305-04001.

(4) Training on employee right-to-know procedures shall conform to WAC 296-800-170, chemical hazard communication program.

(5) Training on overhaul procedures and operations shall conform to WAC 296-305-05001.

(6) Training on wildland fires shall conform to WAC 296-305-07001 through 296-305-07019.

(7) Training on confined space entry and/or rescue shall conform to chapter 296-62 WAC, Part M, Permit-required confined spaces and WAC 296-305-05003.

(8) Live fire training in structures shall conform to NFPA 1403 and this section.

(9) The employer shall provide training and education for all members commensurate with those duties and functions that members are expected to perform. Such training

and education shall be provided to members before they perform emergency activities. Fire service leaders and training instructors shall be provided with training and education which is more comprehensive than that provided to the general membership of the fire department.

(10) The employer shall assure that training and education is conducted frequently enough to assure that each member is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger members or other employees. All members shall be provided with training at least annually. In addition, members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.

WSR 05-20-068

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed October 4, 2005, 10:12 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Portable ladders, the purpose of this rule making is to make this rule easy to read, understand and more usable for employers. This adoption will place all portable ladder requirements (chapters 296-24, 296-155, and 296-800 WAC) into chapter 296-876 WAC, Portable ladders. There are no anticipated effects.

AMENDED PARTS:

Chapter 296-24 WAC, Part J-1.

- Added the word "fixed" into the title of this part.

Chapter 296-155 WAC, Part J.

- Added the word "fixed" into the title of this part.

AMENDED SECTIONS:

WAC 296-155-475 Scope and application.

- Added references to the new portable ladder and scaffold chapters.
- Added the word "fixed" to the scope of this part.

WAC 296-155-47501 Definitions applicable to this part.

- Deleted the following definitions:
 - extension trestle ladder, job-made ladder, ladder types, portable ladder, single rail ladder, special purpose ladder, step stool and trestle ladder.

WAC 296-155-480 Ladders.

- Added the word "fixed" to the title of this section.
- Deleted the requirements relating to portable ladders from this section. Added language referencing the new portable ladder rule, chapter 296-876 WAC.

WAC 296-155-48080 Appendix A.

- Deleted the portable ladder ANSI references.

NEW CHAPTER:**Chapter 296-876 WAC, Portable ladders.**

- Moved requirements relating to portable ladders from chapters 296-800, 296-24, and 296-155 WAC to this chapter. This rule making is part of our four-year plan to rewrite for clarity all of our general occupational safety and health rules.

NEW SECTIONS:**WAC 296-876-100 Scope.**

- Requirements relating to portable ladders, including job-made wooden ladders were moved to this chapter.

WAC 296-876-200 Design and construction, section contents.

- Created this section contents/summary page relating to design and construction of portable ladders.

WAC 296-876-20005 Design and construction.

- Created this section to consolidate all of the design and construction requirements relating to portable ladders located in chapters 296-24, 296-155, and 296-800 WAC.

WAC 296-876-300 Ladder care, section contents.

- Created this section contents/summary page relating to ladder care (condition, inspection, repair storage and transport).

WAC 296-876-30005 Condition and inspection.

- Requirements relating to the condition and inspection of portable ladders were moved from WAC 296-800-29005, 296-800-29010, 296-800-29020, 296-800-29025, and 296-155-480 to this section.

WAC 296-876-30010 Repair.

- Requirements relating to the repair of portable ladders were moved from WAC 296-800-29025 and 296-155-480 to this section.

WAC 296-876-30015 Storage.

- Requirements relating to the storage of portable ladders were moved from WAC 296-800-29010 and 296-800-29025 to this section.

WAC 296-876-30020 Transport.

- Requirements relating to the transport of portable ladders were moved from WAC 296-800-29010 to this section.

WAC 296-876-400 Use, section contents.

- Created this section contents/summary page relating to use of portable ladders.

WAC 296-876-40005 Designed use.

- Requirements relating to the designed use of portable ladders were moved from WAC 296-800-29015, 296-800-29030, and 296-155-480 to this section.

WAC 296-876-40010 Workplace activities or traffic.

- Requirements relating to the workplace activities or traffic around portable ladders were moved from WAC 296-800-29030 and 296-155-480 to this section.

WAC 296-876-40015 Support.

- Requirements relating to the support of portable ladders were moved from WAC 296-800-29015, 296-800-29030, and 296-155-480 to this section.

WAC 296-876-40020 Set-up.

- Requirements relating to the set-up of portable ladders were moved from WAC 296-800-29015, 296-800-29030, and 296-155-480 to this section.

WAC 296-876-40025 Climbing and descending.

- Requirements relating to the climbing and descending on portable ladders were moved from WAC 296-800-29005, 296-800-29015, 296-800-29030, and 296-155-480 to this section.

WAC 296-876-40030 Getting on and off ladders at upper levels.

- Requirements relating to getting on and off ladders at upper levels were moved from WAC 296-800-29030 and 296-155-480 to this section.

WAC 296-876-40035 Exposed electrical hazards.

- Requirements relating to exposed electrical hazards were moved from WAC 296-800-29030 and 296-155-480 to this section.

WAC 296-876-40040 Persons on ladders.

- Requirements relating to persons on portable ladders were moved from WAC 296-800-29035 and 296-155-480 to this section.

WAC 296-876-40045 Multisection ladders.

- Requirements relating to multisection ladders were moved from WAC 296-24-78007, 296-24-79503, 296-800-29015, 296-800-29030, and 296-155-480 to this section.

WAC 296-876-40050 Self-supporting ladders.

- Requirements relating to self-supporting ladders were moved from WAC 296-800-29040 and 296-155-480 to this section.

WAC 296-876-500 Training, section contents.

- Created this section contents/summary page relating to training.

WAC 296-876-50005 Training.

- Requirements relating to training were moved from WAC 296-155-480 to this section.

WAC 296-876-600 Definitions.

- The following definitions were consolidated from chapters 296-24, 296-155, and 296-800 WAC that relate to portable ladders:
 - cleat, extension ladder, failure, job-made ladder, ladder, ladder type, maximum intended load, porta-

ble ladder, reinforced plastic, reinforced plastic ladder, rung, single ladder, single-rail ladder, special-purpose ladder, step, stepladder, trestle ladder and working length.

REPEALED SECTIONS:

WAC 296-24-780 Portable wood ladders, 296-24-78003 Application of requirements, 296-24-78005 Materials, and 296-24-78009 Ladder tests.

- Requirements relating to portable wood ladders have been moved to chapter 296-876 WAC.

WAC 296-24-78007 Construction requirements.

- Requirements relating to portable wood ladders have been moved to chapter 296-876 WAC.
- Requirements relating to the design and construction of portable ladders have been moved to WAC 296-876-20005.

WAC 296-24-795 Portable metal ladders, 296-24-79501 Terms, 296-24-79503 Requirements, and 296-24-79505 Testing.

- Requirements relating to portable metal ladders have been moved to chapter 296-876 WAC.

WAC 296-800-290 Summary, 296-800-29005 Inspect your portable metal ladders periodically, 296-800-29010 Make sure your portable metal ladders are kept in good condition, 296-800-29015 Use your portable metal ladders safely, 296-800-29020 Inspect your portable wooden ladders frequently, 296-800-29025 Make sure your portable wooden ladders are kept in good condition, 296-800-29030 Use your portable wooden ladders safely and for their intended purpose, 296-800-29035 Safely use a portable wooden ladder when working more than 25 feet above ground, and 296-800-29040 Use wooden stepladders safely.

- Requirements relating to portable ladders have been moved to chapter 296-876 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 296-155-475 Scope and application, 296-155-47501 Definitions applicable to this part, 296-155-480 Ladders, and 296-155-48080 Appendix A; and repealing WAC 296-24-780 Portable wood ladders, 296-24-78003 Application of requirements, 296-24-78005 Materials, 296-24-78007 Construction requirements, 296-24-78009 Ladder tests, 296-24-795 Portable metal ladders, 296-24-79501 Terms, 296-24-79503 Requirements, 296-24-79505 Testing, 296-800-290 Summary, 296-800-29005 Inspect your portable metal ladders periodically, 296-800-29010 Make sure your portable metal ladders are kept in good condition, 296-800-29015 Use your portable metal ladders safely, 296-800-29020 Inspect your portable wooden ladders frequently, 296-800-29025 Make sure your portable wooden ladders are kept in good condition, 296-800-29030 Use your portable wooden ladders safely and for their intended purpose, 296-800-29035 Safely use a portable wooden ladder when working more than 25 feet above ground, and 296-800-29040 Use wooden stepladders safely.

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

Adopted under notice filed as WSR 05-12-030 on May 24, 2005.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-876-30005 Condition and inspection.

- Requirements relating to the condition and inspection of portable ladders were moved from WAC 296-800-29005, 296-800-29010, 296-800-29020, 296-800-29025, and 296-155-480 to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- Inserted commas in the text in the table where appropriate.
- Clarified the language in the table relating to visually inspecting the ladder. Deleted the language that said, "Visually inspect the ladder:
 - Metal and reinforced plastic ladders for dents or bends in the side rails and excessively dented rungs or steps.
 - Wood ladders for cracks or splits in the side rails and rungs or steps."

Replaced these bullets with, "Visually inspect the ladder for:

- Dents, bends, cracks or splits."

WAC 296-876-40005 Designed use.

- Requirements relating to the designed use of portable ladders were moved from WAC 296-800-29015, 296-800-29030, and 296-155-480 to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- Added the words "Ladder type" and made this definition consistent with the definition located in WAC 296-876-600.

WAC 296-876-40020 Set-up.

- Requirements relating to the set-up of portable ladders were moved from WAC 296-800-29015, 296-800-29030, and 296-155-480 to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- Added a title to the illustration. It is now called "Safe Ladder Angle."

WAC 296-876-40030 Getting on and off ladders at upper levels.

- Requirements relating to getting on and off ladders at upper levels were moved from WAC 296-800-29030 and 296-155-480 to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- In the first bullet, changed the word "extend" to "extended" for clarity. Also, added a comma between the words "surface" and "if."

WAC 296-876-40040 Persons on ladders.

- Requirements relating to persons on portable ladders were moved from WAC 296-800-29035 and 296-155-480 to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- Deleted the words "Handling pressure equipment."

WAC 296-876-600 Definitions.

- Consolidated definitions relating to portable ladders from chapters 296-24, 296-155, and 296-800 WAC and added to this section.

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

- Deleted the following definitions because the terms are not included in this rule:
 - Double-cleat ladder, equivalent, extension trestle ladder, sectional ladder, single-cleat ladder and stress-grade lumber.
- Changed the definition of "Ladder type" to make it consistent with the definition found earlier in this chapter, WAC 296-876-40005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 22, Amended 6, Repealed 18; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 22, Amended 6, Repealed 18.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 22, Amended 6, Repealed 18.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 22, Amended 6, Repealed 18.

Date Adopted: October 4, 2005.

Gary Weeks
Director

PART J STAIRWAYS AND FIXED LADDERS

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-155-475 Scope and application. This part applies to all stairways and fixed ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under chapter 296-155 WAC, and also sets forth, in specified circumstances, when ladders and stairways are required to be provided. (~~Additional requirements for ladders used on or with scaffolds are contained in chapter 296-155 WAC, Part J-1.~~)

Reference: • Requirements for ladders used on or with scaffolds are located in chapter 296-874 WAC, Scaffolds.
• Requirements for portable ladders are located in chapter 296-876 WAC, Portable ladders.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-155-47501 Definitions applicable to this part. (1) Cleat means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder.

(2) Double-cleat ladder means a ladder similar in construction to a single-cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

(3) Equivalent means alternative designs, materials, or methods that the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

(4) (~~Extension trestle ladder means a self-supporting portable ladder, adjustable in length, consisting of a trestle ladder base and a vertically adjustable extension section, with a suitable means for locking the ladders together (also see trestle ladder).~~)

(~~5~~) Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the structural members lose their ability to carry the loads.

(~~6~~) (5) Fixed ladder means a ladder that cannot be readily moved or carried because it is an integral part of a building or structure. A side-step fixed ladder is a fixed ladder that requires a person getting off at the top to step to the side of the ladder side rails to reach the landing. A through fixed ladder is a fixed ladder that requires a person getting off at the top to step between the side rails of the ladder to reach the landing. For the purpose of this standard, slip forms and scaffolds with built in ladders permanently attached, are considered to be fixed ladders.

(~~7~~) (6) Handrail means a rail used to provide employees with a handhold for support.

(~~8~~) (7) Individual-rung/step ladders means ladders without a side rail or center rail support. Such ladders are made by mounting individual steps or rungs directly to the side or wall of the structure.

(~~9~~) Job made ladder means a ladder that is fabricated, not commercially manufactured. This definition does not apply to any individual-rung/step ladders.

(10) Ladder types. For the purpose of this standard ladder types are defined by the following types:

~~Type IA—Extra heavy duty industrial use.~~

~~Type I—Heavy duty industrial use such as utilities and contractors.~~

~~Type II—Medium duty industrial use such as painters, offices, and light industrial use.~~

~~Type III—Light duty household use.~~

(~~11~~) (8) Landing means any area such as the ground, roof, or platform that provides access/egress for a ladder.

(~~12~~) (9) Lower levels means those areas to which an employee can fall from a stairway or ladder. Such areas include ground levels, floors, roofs, ramps, runways, excava-

tions, pits, tanks, material, water, equipment, and similar surfaces. It does not include the surface from which the employee falls.

~~((13))~~ (10) Maximum intended load means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads anticipated to be applied to a ladder component at any one time.

~~((14))~~ (11) Nosing means that portion of a tread projecting beyond the face of the riser immediately below.

~~((15))~~ (12) Platform means a walking/working surface for persons, elevated above the surrounding floor or ground.

~~((16))~~ (13) Point of access means all areas used by employees for work-related passage from one area or level to another. Such open areas include doorways, passageways, stairway openings, studded walls, and various other permanent or temporary openings used for such travel.

~~((17))~~ Portable ladder means a ladder that can be readily moved or carried.

~~(18))~~ (14) Riser height means the vertical distance from the top of a tread to the top of the next higher tread or platform/landing or the distance from the top of a platform/landing to the top of the next higher tread or platform/landing.

~~((19))~~ (15) Side-step fixed ladder. See "fixed ladder."

~~((20))~~ (16) Single-cleat ladder means a ladder consisting of a pair of side rails, connected together by cleats, rungs, or steps.

~~((21))~~ Single rail ladder means a portable ladder with rungs, cleats, or steps mounted on a single rail instead of the normal two rails used on most other ladders. Single rail ladders are prohibited from use.

(22) Special purpose ladder means a portable ladder that represents either a modification or a combination of design or construction features in one of the general purpose types of ladders previously defined, in order to adapt the ladder to special or specific uses.

~~(23))~~ (17) Spiral stairway means a series of steps attached to a vertical pole and progressing upward in a winding fashion within a cylindrical space.

~~((24))~~ (18) Stairrail system means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

~~((25))~~ Step stool (ladder type) means a self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in overall size, with flat steps and without a pail shelf, designed to be climbed on the ladder top cap as well as all steps. The side rails may continue above the top cap.

~~(26))~~ (19) Through fixed ladder. See "fixed ladder."

~~((27))~~ (20) Tread depth means the horizontal distance from front to back of a tread (excluding nosing, if any).

~~((28))~~ Trestle ladder means a self-supporting portable ladder, nonadjustable in length, consisting of two sections hinged at the top to form equal angles with the base. The size is designated by the length of the side rails measured along the front edge.

~~(29))~~ (21) Unprotected sides and edges means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36 inches (.9 m) or more in height, and any side or edge (except at entrances to

points of access) of a stairway landing, or ladder platform where there is no wall or guardrail system 39 inches (1 m) or more in height.

AMENDATORY SECTION (Amending WSR 96-24-051, filed 11/27/96, effective 2/1/97)

WAC 296-155-480 Fixed ladders. Requirements relating to portable ladders were removed from this section and are now located in chapter 296-876 WAC. Portable ladders.

(1) General. The following requirements apply to all fixed ladders as indicated ~~(, including job-made ladders)~~.

(a) Ladders shall be capable of supporting ~~((the following loads))~~, without failure ~~(=~~

(i) ~~Each self-supporting portable ladder: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladder shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this section shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction. Ladders built and tested in conformance with the applicable provisions of appendix A of this part will be deemed to meet this requirement.~~

~~(ii) Each portable ladder that is not self-supporting: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladders shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this section shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction when the ladder is placed at an angle of 75 1/2 degrees from the horizontal. Ladders built and tested in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.~~

~~(iii) Each fixed ladder:), at least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung. Ladders built in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.~~

(b) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(c) ~~((i))~~ Rungs, cleats, and steps of ~~((portable ladders (except as provided below) and))~~ fixed ladders (including individual-rung/step ladders) shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured between centerlines of the rungs, cleats, and steps.

~~((ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between centerlines of the rungs, cleats, and steps.~~

~~(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall be not less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between centerlines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm), as measured between centerlines of the rungs, cleats, and steps.~~

~~(iv) Cleats on job-made ladders shall be inset into the edges of the side rails one half inch, or filler blocks shall be used on the side rails between the cleats.~~

~~(v) Cleats on job-made ladders shall be secured to each rail with three 10d common wire nails or other fasteners of equivalent strength.~~

~~(d)((i)) The minimum clear distance between the sides of individual-rung/step ladders and the minimum clear distance between the side rails of other fixed ladders shall be 16 inches (41 cm).~~

~~((ii) The minimum clear distance between side rails for all portable ladders shall be 11 1/2 inches (29 cm).)~~

~~(e) The rungs of individual-rung/step ladders shall be shaped such that employees' feet cannot slide off the end of the rungs.~~

~~(f)((i)) The rungs and steps of fixed metal ladders manufactured after the effective date of this standard, shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.~~

~~((ii) The rungs and steps of portable metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.~~

~~(g) Ladders shall not be tied or fastened together to provide longer sections unless they are specifically designed for such use.~~

~~(h) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used.~~

~~(i) When splicing is required to obtain a given length of side rail, the resulting side rail must be at least equivalent in strength to a one-piece side rail made of the same material.~~

~~(j)) (g) Except when portable ladders are used to gain access to fixed ladders (such as those on utility towers, billboards, and other structures where the bottom of the fixed ladder is elevated to limit access), when two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing between the ladders. (The requirements to have guardrail systems with toeboards for falling object and overhead protection on platforms and landings are set forth in chapter 296-155 WAC, Part K.)~~

~~((k)) (h) Ladder components shall be surfaced so as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.~~

~~((i)) (i) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a side rail.~~

~~((m)) (j) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be 7 inches (18 cm), except in the case of an elevator pit ladder, for which a minimum perpendicular clearance of 4 1/2 inches (11 cm) is required.~~

~~((n)) (k) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in ((o)) (l) of this subsection.~~

~~((o)) (l) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches (61 cm), provided that a deflection device is installed to guide employees around the obstruction.~~

~~((p)) (m) Through fixed ladders at their point of access/egress shall have a step-across distance of not less than 7 inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.~~

~~((q)) (n) Fixed ladders without cages or wells shall have a clear width to the nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.~~

~~((r)) (o) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m) but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.~~

~~((s)) (p) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders shall be equipped with one of the following:~~

~~(i) Ladder safety devices; or~~

~~(ii) Self-retracting lifelines, and rest platforms at intervals not to exceed 150 feet (45.7 m); or~~

~~(iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).~~

~~((t)) (q) Cages for fixed ladders shall conform to all of the following:~~

~~(i) Horizontal bands shall be fastened to the side rails of rail ladders, or directly to the structure, building, or equipment for individual-rung ladders;~~

~~(ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;~~

~~(iii) Cages shall extend not less than 27 inches (68 cm), or more than 30 inches (76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;~~

~~(iv) The inside of the cage shall be clear of projections;~~

~~(v) Horizontal bands shall be spaced not more than 4 feet (1.2 m) on center vertically;~~

~~(vi) Vertical bars shall be spaced at intervals not more than 9 1/2 inches (24 cm) on center horizontally;~~

~~(vii) The bottom of the cage shall be at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be flared not less than 4 inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;~~

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

~~((t))~~ (r) Wells for fixed ladders shall conform to all of the following:

(i) They shall completely encircle the ladder;

(ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder.

~~((v))~~ (s) Ladder safety devices, and related support systems, for fixed ladders shall conform to all of the following:

(i) They shall be capable of withstanding without failure a drop test consisting of an 18-inch (41 cm) drop of a 500-pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within 2 feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to 7 feet/sec. (2.1 m/sec.) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed 9 inches (23 cm) in length.

~~((w))~~ (t) The mounting of ladder safety devices for fixed ladders shall conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides for flexible carriers shall be installed at a minimum spacing of 25 feet (7.6 m) and maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

~~((x))~~ (u) The side rails of through or side-step fixed ladders shall extend 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous, the access level shall be the top of the parapet.

~~((y))~~ (v) For through-fixed-ladder extensions, the steps or rungs shall be omitted from the extension and the extension of the side rails shall be flared to provide not less than 24 inches (61 cm) nor more than 30 inches (76 cm) clearance between side rails. Where ladder safety devices are provided, the maximum clearance between side rails of the extensions shall not exceed 36 inches (91 cm).

~~((z))~~ (w) For side-step fixed ladders, the side rails and the steps or rungs shall be continuous in the extension.

~~((aa))~~ (x) Individual-rung/step ladders, except those used where their access openings are covered with manhole covers or hatches, shall extend at least 42 inches (1.1 m) above an access level or landing platform either by the continuation of the rung spacings as horizontal grab bars or by providing vertical grab bars that shall have the same lateral spacing as the vertical legs of the rungs.

(2) Use. The following requirements apply to the use of all fixed ladders, ~~((including job-made ladders;))~~ except as otherwise indicated:

~~((a))~~ ~~((When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.~~

~~((b))~~ Ladders shall be maintained free of oil, grease, and other slipping hazards.

~~((c))~~ (b) Ladders shall not be loaded beyond the maximum intended load for which they were built, nor beyond their manufacturer's rated capacity.

~~((d))~~ (c) Ladders shall be used only for the purpose for which they were designed.

~~((e))~~ (i) ~~Nonself-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).~~

~~((ii))~~ ~~Wood job-made ladders with spliced side rails shall be used at an angle such that the horizontal distance is one-eighth the working length of the ladder.~~

~~((iii))~~ (d) Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the back side of the ladder.

~~((f))~~ ~~Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement.~~

~~((g))~~ ~~Ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement. Slip-resistant feet shall not be used as a substitute for care in placing, lashing, or holding a ladder that is used upon slippery surfaces including, but not limited to, flat metal or concrete surfaces that are constructed so they cannot be prevented from becoming slippery.~~

~~((h))~~ ~~Ladders placed in any location where they can be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.~~

~~((i))~~ (e) The area around the top and bottom of ladders shall be kept clear.

~~((j))~~ ~~The top of a nonself-supporting ladder shall be placed with the two rails supported equally unless it is equipped with a single support attachment.~~

~~((k))~~ ~~Ladders shall not be moved, shifted, or extended while occupied.~~

(f) Ladders shall have nonconductive side rails if they are used where the employee or the ladder could contact exposed energized electrical equipment, except as provided in the following:

~~(i) Portable metal or other portable conductive ladders shall not be used on or near energized line or equipment except where nonconductive ladders present a greater electrical hazard than conductive ladders. A greater electrical hazard would be static electricity such as might be found in extra high voltage substations.~~

~~(ii) All conductive or metal ladders shall be prominently marked and identified as being conductive.~~

~~(iii) All conductive or metal ladders shall be grounded when used near energized lines or equipment.~~

~~(m) The top or top step of a stepladder shall not be used as a step.~~

~~(n) Cross-bracing on the rear section of stepladders shall not be used for climbing unless the ladders are designed and provided with steps for climbing on both front and rear sections.~~

~~(o)) (f) Ladders shall be inspected by a competent person for visible defects on a periodic basis and after any occurrence that could affect their safe use.~~

~~((p) Portable ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, corroded components, or other faulty or defective components, shall either be immediately marked in a manner that readily identifies them as defective, or be tagged with "do not use" or similar language, and shall be withdrawn from service until repaired.~~

~~(q)) (g) Fixed ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, or corroded components, shall be withdrawn from service until repaired. The requirement to withdraw a defective ladder from service is satisfied if the ladder is either:~~

~~(i) Immediately tagged with "do not use" or similar language;~~

~~(ii) Marked in a manner that readily identifies it as defective;~~

~~(iii) Or blocked (such as with a plywood attachment that spans several rungs).~~

~~((r)) (h) Ladder repairs shall restore the ladder to a condition meeting its original design criteria, before the ladder is returned to use.~~

~~((s)) (i) Single-rail ladders shall not be used.~~

~~((t)) (j) When ascending or descending a ladder, the user shall face the ladder.~~

~~((u)) (k) Employees shall not ascend or descend ladders while carrying tools or materials that might interfere with the free use of both hands.~~

~~((v) When working from a ladder, the ladder shall be secured at both top and bottom.~~

~~(w)) (l) No type of work shall be performed on a ladder over twenty-five feet from the ground or floor that requires the use of both hands to perform the work, unless a safety belt is worn and the safety lanyard is secured to the ladder.~~

~~((x)) (m) Any work that requires wearing eye protection, respirators, or handling of pressure equipment shall not~~

be performed from a ladder more than twenty-five feet above the surrounding surface.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-155-4800 Appendix A. This appendix serves as a nonmandatory guideline to assist employers in complying with the ladder loading and strength requirements of WAC 296-155-480 (1)(a). A ladder designed and built in accordance with ~~((the applicable national consensus standards, as set forth below,))~~ ANSI A14.3.1984 - American National Standard for Ladders-Fixed-Safety Requirements will be considered to meet the requirements of WAC 296-155-480 (1)(a)(:)).

~~((** Manufactured portable wood ladders: American National Standards Institute (ANSI) A14.1-1982 American National Standard for Ladders-Portable Wood Safety Requirements.~~

~~** Manufactured portable metal ladders: ANSI A14.2-1982 American National Standard for Ladders-Portable Metal Safety Requirements.~~

~~** Manufactured fixed ladders: ANSI A14.3-1984 American National Standard for Ladders-Fixed-Safety Requirements.~~

~~** Job-made ladders: ANSI A14.4-1979 Safety Requirements for Job-Made Ladders.~~

~~** Plastic ladders: ANSI A14.5-1982 American National Standard for Ladders-Portable Reinforced Plastic Safety Requirements.))~~

PART J-1

WORKING SURFACES, GUARDING FLOORS AND WALL OPENINGS, FIXED LADDERS

~~((Working Surfaces, Ladders, Scaffolds))~~

Note: Requirements relating to portable ladders have been moved to chapter 296-876 WAC, Portable ladders.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-24-780	Portable wood ladders.
WAC 296-24-78003	Application of requirements.
WAC 296-24-78005	Materials.
WAC 296-24-78007	Construction requirements.
WAC 296-24-78009	Ladder tests.
WAC 296-24-795	Portable metal ladders.
WAC 296-24-79501	Terms.
WAC 296-24-79503	Requirements.
WAC 296-24-79505	Testing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-800-290	Summary.
WAC 296-800-29005	Inspect your portable metal ladders periodically.
WAC 296-800-29010	Make sure your portable metal ladders are kept in good condition.
WAC 296-800-29015	Use your portable metal ladders safely.
WAC 296-800-29020	Inspect your portable wooden ladders frequently.
WAC 296-800-29025	Make sure your portable wooden ladders are kept in a good condition.
WAC 296-800-29030	Use your portable wooden ladders safely and for their intended purpose.
WAC 296-800-29035	Safely use a portable wooden ladder when working more than 25 feet above ground.
WAC 296-800-29040	Use wooden stepladders safely.

Chapter 296-876 WAC**PORTABLE LADDERS**NEW SECTION

WAC 296-876-100 Scope. This chapter applies to portable ladders, including job-made wooden ladders.

- Exemption:** This chapter does not apply to portable ladders used:
- By the fire services for fire combat that are covered by Safety standards for fire fighters, chapter 296-305 WAC;
 - OR**
 - For agriculture activities covered by Safety standards for agriculture, chapter 296-307 WAC.

NEW SECTION

WAC 296-876-200 Design and construction—Section contents.

Your responsibility:

To make sure portable ladders meet design and construction requirements.

Design and construction
WAC 296-876-20005.

NEW SECTION**WAC 296-876-20005 Design and construction.****IMPORTANT:**

Design and construction requirements of this section do not apply to special purpose ladders.

Definition:

A *special purpose ladder* is a portable ladder that is made by modifying or combining design or construction features of the general-purpose types of ladders in order to adapt the ladder to special or specific uses.

You must:

- Make sure portable ladders and job-made wooden ladders manufactured **on or after January 1, 2006**, meet the design and construction requirements and specifications of the appropriate American National Standards Institute (ANSI) standard:

- ANSI A14.1-2000, American National Standard for Ladders-Portable Wood-Safety Requirements.

- ANSI A14.2-2000, American National Standard for Ladders-Portable Metal-Safety Requirements.

- ANSI A14.5-2000, American National Standard for Ladders-Portable Reinforced Plastic-Safety Requirements.

- ANSI A14.4-2002, American National Standard Safety Requirements for Job-Made Wooden Ladders.

- Make sure portable ladders manufactured **before January 1, 2006**, meet the design and construction requirements and specifications of the appropriate ANSI standard in effect on the date of manufacture:

- ANSI A14.1, American National Standard for Ladders-Portable Wood-Safety Requirements.

- ANSI A14.2, American National Standard for Ladders-Portable Metal-Safety Requirements.

- ANSI A14.5, American National Standard for Ladders-Portable Reinforced Plastic-Safety Requirements.

Note: A commercially manufactured portable ladder should have a label indicating it meets the requirements of the ANSI standard. If in doubt, check with the manufacturer.

NEW SECTION**WAC 296-876-300 Ladder care—Section contents.****Your responsibility:**

To make sure portable ladders are inspected, maintained, stored and transported properly.

Condition and inspection

WAC 296-876-30005.

Repair

WAC 296-876-30010.

Storage

WAC 296-876-30015.

Transport

WAC 296-876-30020.

NEW SECTION**WAC 296-876-30005 Condition and inspection.****You must:**

- Keep portable ladders in good, usable condition. Good, usable condition includes, but is not limited to:

- Joints between the steps or rungs and the side rails are tight.
- Rungs, cleats, or steps are not bent, broken, or missing.
- Side rails are not bent, broken, or split.
- All bolts and rivets are in place and secure.
- Hardware, fittings and accessories are securely attached and working properly.
- Ropes are not frayed or badly worn.
- Moveable parts operate freely without binding or excessive play.
- Safety feet and other auxiliary equipment are not excessively worn.
- Metal components are not corroded.
- There are no other faulty or defective components.
- Make sure wood ladders are not coated with an opaque covering except for the minimum amount necessary for identification and warning information which may be placed on one face only of a side rail.
- Have a competent person inspect a ladder:
 - When required by Table 1, Ladder Inspection Criteria;
- AND**
- After any other occurrence that could affect safe use.
- Make sure any ladder with structural damage or other hazardous defect is:
 - Marked to identify it as defective or tagged with "do not use" or similar language;
- AND**
- Removed from service.

Note: Ladders subjected to certain acids or alkali materials may experience chemical corrosion and a reduction in strength. Consult the manufacturer or a qualified person prior to use.

**Table 1
Ladder Inspection Criteria**

When the ladder is:	Do the following:
First placed into service and periodically while in service	<ul style="list-style-type: none"> • Inspect the ladder for visible defects, including, but not limited to: <ul style="list-style-type: none"> - Working parts; AND - Rung or step connections to the side rails.
Damaged by impact or tips over	<ul style="list-style-type: none"> • Visually inspect the ladder for: <ul style="list-style-type: none"> - Dents, bends, cracks or splits • Check: <ul style="list-style-type: none"> - Rung or step connections to the side rails. - Hardware connections. - Rivets for shear damage. - All other components.

When the ladder is:	Do the following:
Exposed to excessive heat such as a fire	<ul style="list-style-type: none"> • Visually inspect the ladder for damage. • Test for deflection and strength characteristics using the "in-service use tests" contained in the appropriate ANSI. <p>Exemption: Job-made wooden ladders are not to be subjected to load or impact tests. Those tests may weaken lumber components or fasteners, causing hidden damage that could result in sudden failure during use.</p>

NEW SECTION

WAC 296-876-30010 Repair.

You must:

- Make sure repairs restore the ladder to a condition meeting its original design criteria.
- Prohibit repairs to a defective side rail.

Note: A commercially manufactured ladder with a defective side rail cannot be repaired by the user. Side rail repair can only be done by the manufacturer.

NEW SECTION

WAC 296-876-30015 Storage.

You must:

- Make sure material is not put on ladders in storage.

Note:

- Store portable ladders on racks designed to protect them when not in use. The racks should have enough supporting points to prevent the ladder from sagging.
- Do not store wood ladders near sources of heat, moisture, or dampness.

NEW SECTION

WAC 296-876-30020 Transport.

You must:

- Properly support ladders while transporting them on vehicles.
- Make sure ladders transported in a truck rack are positively secured in a fixed position that prevents chafing or abrasion.

Note: Securing the ladder to each support point will greatly reduce damage due to road shock.

NEW SECTION

WAC 296-876-400 Use—Section contents.

Your responsibility:

To use portable ladders safely.
Designed use
WAC 296-876-40005.

Workplace activities or traffic
 WAC 296-876-40010.
 Support
 WAC 296-876-40015.
 Set-up
 WAC 296-876-40020.
 Climbing and descending
 WAC 296-876-40025.
 Getting on and off ladders at upper levels
 WAC 296-876-40030.
 Exposed electrical hazards
 WAC 296-876-40035.
 Persons on ladders
 WAC 296-876-40040.
 Multisection ladders
 WAC 296-876-40045.
 Self-supporting ladders
 WAC 296-876-40050.

NEW SECTION

WAC 296-876-40005 Designed use.

You must:

- Use ladders only for their intended purpose.

Note: Unless specifically recommended by the manufacturer, do not use a ladder as a:

- Brace.
- Skid.
- Lever.
- Guy or gin pole.
- Gangway.
- Platform.
- Scaffold plank.
- Material hoist.

You must:

• Make sure not to overload ladders. Do not exceed either the:

- Maximum intended load;

OR

- Manufacturer’s rated capacity.

Definitions:

– The *maximum intended load* is the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a ladder or ladder component at any one time.

– **Ladder type.** The designation that identifies the maximum intended load (working load) of the ladder. Ladder types are as follows:

Duty Rating	Ladder Type	Use	Maximum Intended Load (Pounds)
Extra Heavy-Duty	IA	Industry, utilities, contractors	300
Heavy-Duty	I	Industry, utilities, contractors	250
Medium-Duty	II	Painters, offices, light maintenance	225

Duty Rating	Ladder Type	Use	Maximum Intended Load (Pounds)
Light-Duty	III	General household use	200

NEW SECTION

WAC 296-876-40010 Workplace activities or traffic.

You must:

• Protect ladders that are set-up in a location where they could be displaced by workplace activities or traffic by either:

- Securing the ladder to prevent accidental displacement;

OR

– Using a barricade to keep the activities or traffic away from the ladder.

• Protect ladders that are set-up in front of doors that open towards the ladder by doing at least one of the following:

- Block the door open.
- Lock the door.
- Guard the door to keep it from opening into the ladder.

NEW SECTION

WAC 296-876-40015 Support.

You must:

• Place the ladder either:

- With a secure footing on a firm, level support surface;

OR

– Secure the ladder to prevent accidental displacement.

• Make sure a ladder is not placed on ice, snow, or other slippery surface unless the ladder is prevented from accidental displacement by either:

- Securing it;

OR

– Providing the ladder with slip-resistant feet.

Note: Slip-resistant feet are not a substitute for care in placing, lashing, or holding a ladder that is used on a slippery surface.

You must:

• Make sure ladders are not placed on boxes, barrels, or other unstable bases to obtain additional height.

• Place a straight ladder so the side rails are equally supported by the top support, unless the ladder is equipped with a single support attachment.

• Make sure the top support of the ladder is reasonably rigid and able to support the load.

NEW SECTION

WAC 296-876-40020 Set-up.

You must:

• Set-up nonself-supporting ladders at a safe angle. The ladder is set at the proper angle when the horizontal distance from the top support to the foot of the ladder is approximately one-quarter the working length of the ladder.

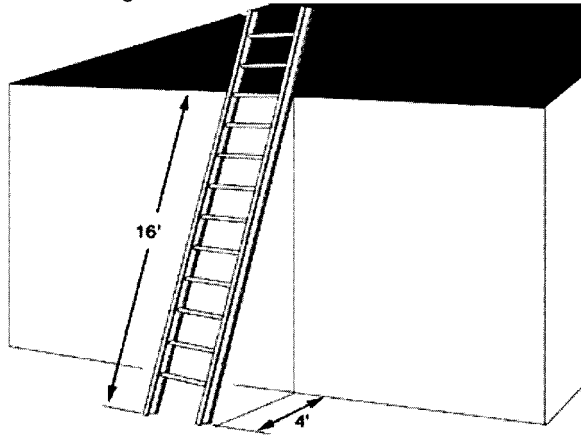
- Set-up job-made ladders with spliced side rails so that the horizontal distance from the top support to the foot of the ladder is not greater than one-eighth the working length of the ladder.

Definition:

The *working length* of a nonself-supporting ladder is the length, measured along the rails, from the base support point of the ladder to the point of bearing at the top.

Safe Ladder Angle**Note:**

Safe ladder angle.

**NEW SECTION****WAC 296-876-40025 Climbing and descending.****You must:**

- Have both hands free to hold on to the ladder.
- Face the ladder when climbing or descending.
- Keep ladders free of oil, grease, or other slippery materials.
- Keep the area around the top and bottom of ladders clear.
- Make sure single-rail ladders are not used.

Definition:

A *single-rail ladder* is a portable ladder with crosspieces mounted on a single rail.

NEW SECTION**WAC 296-876-40030 Getting on and off ladders at upper levels.****You must:**

- Make sure a ladder used to access an upper level has the side rails extended at least three feet (.9 m) above the landing surface if the ladder length permits.
- Do the following if a ladder used to access an upper level is not long enough to obtain a three-foot side rail extension above the landing surface:
 - Secure the ladder at the top to a rigid support that will not deflect.
 - Provide a grasping device, such as a grabrail, to assist in mounting and dismounting the ladder.
 - Make sure the ladder deflection under a load would not, by itself, cause it to slip off its support.

- Make sure, if two or more separate ladders are used to reach an elevated work area, that the ladders are offset with a platform or landing between them.

Exemption:

A platform or landing is not required when a portable ladder is used to reach a fixed ladder on structures such as utility towers and billboards where the bottom of the fixed ladder is elevated to limit access.

NEW SECTION**WAC 296-876-40035 Exposed electrical hazards.****You must:**

- Use ladders with nonconductive side rails where the ladder could contact uninsulated, energized electric lines or equipment.
 - Metal ladders or other ladders specifically designed to permit grounding or dissipation of static electricity may be used around high static electrical fields if all of the following are met:
 - Using nonconductive ladders would present a greater hazard than using conductive ladders.
 - Ladders are prominently marked and identified as being conductive.
 - Ladders are grounded when used near energized lines or equipment.

Note:

Examples of ladders with conductive side rails are metal ladders, and wood or reinforced plastic ladders with metal side rail reinforcement.

NEW SECTION**WAC 296-876-40040 Persons on ladders.****You must:**

- Make sure a ladder is not moved, shifted, or adjusted while anyone is on it.
 - Secure the ladder at the top and bottom when working from it.
 - Use a safety belt with a lanyard that is secured to the ladder when doing any work that:
 - Requires the use of both hands;
- AND**
- Is done from a ladder more than twenty-five feet above the ground or floor.
 - Prohibit work being done from a ladder more than twenty-five feet above the ground or floor if the work requires wearing eye protection or a respirator.

NEW SECTION**WAC 296-876-40045 Multisection ladders.****You must:**

- Make sure not to tie or fasten ladder sections together to make longer ladders unless:
 - The ladder manufacturer endorses this type of use;
- AND**
- You have hardware fittings specifically designed for this purpose.
 - Make sure each section of a multisection ladder, when fully extended and locked in position to be used, overlaps the adjacent section as indicated in Table 2, Minimum Required Overlap for Extension Ladders.

Table 2
Minimum Required Overlap for Extension Ladders

If the ladder size (feet) is:	Minimum required overlap for a two-section ladder is (feet):
Up to and including 36	3
Over 36 up to and including 48	4
Over 48 up to and including 60	5

NEW SECTION

WAC 296-876-40050 Self-supporting ladders.

You must:

- Make sure self-supporting ladders are not used as single ladders or in the partially closed position.
- Make sure stepladders are fully opened with the spreaders locked.
- Make sure not to climb on the rear braces of a self-supporting ladder unless they are designed and recommended for that purpose by the manufacturer.
- Prohibit standing or stepping on the:
 - Top cap and top step of a step or trestle ladder.
 - Bucket or pail shelf of a self-supporting ladder.

Exemption: The restriction against using the top step is not applicable if it is eighteen inches or more below the top cap.

NEW SECTION

WAC 296-876-500 Training—Section contents.

Your responsibility:

To train employees who use portable ladders.
Training
WAC 296-876-50005.

NEW SECTION

WAC 296-876-50005 Training.

You must:

- Train employees to recognize ladder hazards and the procedures to minimize these hazards.
- Have a competent person train employees that use portable ladders in at least the following topics:
 - The proper construction, use, placement, and care in handling ladders.
 - The maximum intended load capacities of ladders that are used.
 - The requirements of this chapter.
- Retrain employees as necessary to make sure they know and understand the content of the original training.

NEW SECTION

WAC 296-876-600 Definitions.

Cleat

A ladder crosspiece used in climbing or descending. Also called a step or rung.

Extension ladder

A nonself-supporting portable ladder consisting of two or more sections. The sections travel in guides or brackets that allow the length of the ladder to be changed. The size is designated by the sum of the lengths of each section, measured along the side rails.

Failure

The ladder or ladder component loses the ability to carry the load, breaks, or separates into component parts.

Job-made ladder

A ladder that is made, not commercially manufactured, to fit a specific job situation. They are for temporary use until a particular phase of construction is completed or until permanent stairways or fixed ladders are ready to use.

Ladder

A device having steps, rungs, or cleats that can be used to climb or descend.

Ladder type

The designation that identifies the maximum intended load (working load) of the ladder. Ladder types are as follows:

Duty Rating	Ladder Type	Use	Maximum Intended Load (Pounds)
Extra Heavy-Duty	IA	Industry, utilities, contractors	300
Heavy-Duty	I	Industry, utilities, contractors	250
Medium-Duty	II	Painters, offices, light maintenance	225
Light-Duty	III	General household use	200

Maximum intended load

The total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a ladder or ladder component at any one time. Sometimes referred to as working load.

Portable ladder

A ladder that can be readily moved or carried.

Reinforced plastic

A plastic that has high-strength fillers embedded in the base resin to increase strength.

Reinforced plastic ladder

A ladder whose side rails are reinforced plastic. The crosspieces, hardware, and fasteners may be made of metal or other suitable material.

Rung

A ladder crosspiece used in climbing or descending. Also called a cleat or step.

Single ladder

A nonself-supporting portable ladder, nonadjustable in length, consisting of one section. The size is designated by the overall length of the side rail.

Single-rail ladder

A portable ladder with crosspieces mounted on a single rail. Single-rail ladders are prohibited from use.

Special-purpose ladder

A portable ladder that is made by modifying or combining design or construction features of the general-purpose types of ladders in order to adapt the ladder to special or specific uses.

Step

A ladder crosspiece used in climbing or descending. Also called a cleat or rung.

Stepladder

A self-supporting portable ladder, nonadjustable in length, with flat steps and hinged at the top. The size is designated by the overall length of the ladder measured along the front edge of the side rails.

Trestle ladder

A self-supporting portable ladder, nonadjustable in length, consisting of two sections hinged at the top to form equal angles with the base. The size is designated by the length of the side rails measured along the front edge.

Working length

The length of a nonself-supporting ladder, measured along the rails, from the base support point of the ladder to the point of bearing at the top.

WSR 05-20-074

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 4, 2005, 2:07 p.m., effective November 4, 2005]

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

Purpose: This rule-making order adopts an amendment correcting an error of omission in WAC 16-406-015. The department recently adopted rewritten apricot standards (chapter 16-406 WAC, Washington standards for apricots) on May 25, 2005 (WSR 05-12-036). The chapter was rewritten and reformatted so it was easier to understand and use. No requirements were changed. During the rewrite, the following language was inadvertently deleted from Table 1 in WAC 16-406-015: "(2) **Any deformity or injury causing the skin to break** more than 3/8 of an inch in diameter or which seriously affects the apricot's appearance." The purpose of this filing is to permanently add the language that was inadvertently omitted from Table 1. This permanent rule amendment, when it becomes effective, will replace the emergency rule amendment filed by the department on July 27, 2005 (WSR 05-16-034).

Citation of Existing Rules Affected by this Order: Amending WAC 16-406-015.

Statutory Authority for Adoption: Chapters 15.17 and 34.05 RCW.

Adopted under notice filed as WSR 05-16-115 on August 3, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 4, 2005.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 05-12-036, filed 5/25/05, effective 6/25/05)

WAC 16-406-015 What is considered "damage" and "serious damage" to apricots? The following tables explain the differences between "damage" and "serious damage" as applied to apricots:

Table 1
"Damage" and "Serious Damage" for All Varieties of Apricots **except** the Riland Variety

Except for the Riland variety, the following are considered damage :	Except for the Riland variety, the following are considered serious damage :
(1) Well-healed growth cracks over 3/8 of an inch in length.	(1) Well-healed growth cracks that are more than 1/2 inch in length.
(2) Punctures over 3/16 of an inch in diameter.	(2) <u>Any deformity or injury causing the skin to break more than 3/8 of an inch in diameter or which seriously affects the apricot's appearance.</u>
(3) Stem pulls over 3/8 of an inch in diameter.	
(4) Smooth shallow limb rubs more than 1/4 of an inch in diameter.	
(5) Russetting affecting more than ten percent of the apricot's surface.	
(6) Bruises exceeding five percent of the apricot's surface.	((2)) (3) Bruises exceeding ten percent of the surface of the apricot.
(7) Hail marks that are:	((3)) (4) Hail marks that are more than:
(a) Not shallow and superficial; or	(a) 3/16 of an inch deep; or
(b) More than 3/8 of an inch in diameter in the aggregate; or	(b) 1/2 of an inch in diameter in the aggregate; or
(c) More than 1/8 inch in diameter when the skin has been broken.	(c) 1/2 inch in diameter when the skin has been broken.

Table 2
"Damage" and "Serious Damage" for the Riland Variety of
Apricots

For the Riland variety, the following are considered damage :	For the Riland variety, the following are considered serious damage :
(1) Growth cracks exceeding 3/8 inches in length.	(1) Growth cracks that are not well healed and are more than 1/2 inch in length.
(2) Punctures exceeding 1/4 of an inch in diameter.	
(3) Stem pulls exceeding 1/2 inch in diameter.	
(4) Smooth shallow limb rubs more than 1/4 of an inch in diameter.	
(5) Russetting affecting more than ten percent of the apricot's surface.	
(6) Bruises exceeding five percent of the apricot's surface.	(2) Bruises exceeding ten percent of the surface of the apricot.
(7) Hail marks that are:	(3) Hail marks that are more than:
(a) Not shallow and superficial; or	(a) 3/16 of an inch deep; or
(b) More than 3/8 of an inch in diameter in the aggregate; or	(b) 1/2 of an inch in diameter in the aggregate; or
(c) More than 1/8 inch in diameter when the skin has been broken.	(c) 1/2 inch in diameter when the skin has been broken.

WSR 05-20-075

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 4, 2005, 2:09 p.m., effective November 4, 2005]

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

Purpose: This rule-making order adopts an amendment correcting an error of omission in WAC 16-414-155. The department adopted rewritten cherry standards (chapter 16-414 WAC, Washington standards for cherries) on May 25, 2005 (WSR 05-12-037). The chapter was rewritten and reformatted so it was easier to understand and use. No requirements were changed. During the rewrite, the word "damage" was inadvertently omitted from the section title for WAC 16-414-155. The correct title should read: "What specific defects are considered serious damage to Washington standards for sulphured cherries?" The word "damage" was also inadvertently omitted from the first sentence of the section. The corrected sentence should read: "The defects listed in the following table are considered serious damage." The purpose of this filing is to permanently add the omitted word "damage" to WAC 16-414-155 where appropriate. This housekeeping amendment is necessary to eliminate any ambiguity and confusion in the mind of someone reading WAC 16-414-155.

Citation of Existing Rules Affected by this Order: Amending WAC 16-414-155.

Statutory Authority for Adoption: Chapters 15.17 and 34.05 RCW.

Adopted under notice filed as WSR 05-16-116 on August 3, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 4, 2005.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-155 What specific defects are considered serious damage to Washington standards for sulphured cherries? The defects listed in the following table are considered serious damage:

DEFECT	DESCRIPTION
(1) Deformed cherry or double cherry	Any deformed sulphured cherry or double sulphured cherry is considered serious damage.
(2) Mechanical injury	Mechanical injury to Washington No. 2 whole cherries is considered serious damage if it causes any: <ul style="list-style-type: none"> • Open pitter holes; • Pitter hole where there is a serious loss of flesh; • Pitter tears; or • Other mechanical injury that seriously affects the cherry's appearance.
(3) Mechanical injury	Mechanical injury to Washington No. 2 halved cherries is considered serious damage if it causes any: <ul style="list-style-type: none"> • Open pitter holes; • Pitter hole where there is a serious loss of flesh; • Pitter tears; or • Other mechanical injury that seriously affects the cherry's appearance.
(4) Surface discoloration	Surface discoloration is considered serious damage when any: <ul style="list-style-type: none"> • Light surface discoloration exceeds, in the aggregate, 1/2 of the cherry's surface; or • Dark surface discoloration exceeds, in the aggregate, 1/8 of the cherry's surface.

DEFECT	DESCRIPTION
(5) Rain cracks	Rain cracks on Washington No. 2 whole cherries are considered serious damage if: <ul style="list-style-type: none"> • In the stem basin and more than 1/2 inch in length; or • Outside the stem basin and more than 3/8 of an inch in length, measured on the circumference.
(6) Rain cracks	Rain cracks on Washington No. 2 halved cherries are considered serious damage if: <ul style="list-style-type: none"> • In the stem basin and more than 1/4 inch in length; or • Outside the stem basin more than 3/16 of an inch in length, measured on the circumference.
(7) Blemished	Any blemish or combination of blemishes are considered serious damage if they seriously: <ul style="list-style-type: none"> • Affect the appearance of the cherry; or • Discolor the flesh of the cherry.

WSR 05-20-076

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 4, 2005, 2:54 p.m., effective November 4, 2005]

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

Purpose: To add new fee categories for certificate of removal registration and academic intern. The application fee for certificate of removal registration will be \$30.00 with an annual renewal of \$15.00. No fee is required for registration as an academic intern.

Citation of Existing Rules Affected by this Order: Amending WAC 308-48-800.

Statutory Authority for Adoption: RCW 18.39.181 and chapter 34.05 RCW.

Adopted under notice filed as WSR 05-15-122 on July 18, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2 [0], Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: October 4, 2005.

Joe Vincent Jr.
Administrator

AMENDATORY SECTION (Amending WSR 03-11-021, filed 5/12/03, effective 6/30/03)

WAC 308-48-800 Funeral director/embalmer fees.

The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination or reexamination	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Certification	25.00
Embalmer ((apprentice)) <u>intern</u> :	
((Apprentice)) <u>Intern</u> application	75.00
((Apprentice)) <u>Intern</u> renewal	45.00
Duplicate	15.00
Certification	25.00
Funeral director:	
State examination or reexamination	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Certification	25.00
Funeral director (((apprentice))) <u>intern</u> :	
((Apprentice)) <u>Intern</u> application	75.00
((Apprentice)) <u>Intern</u> renewal	45.00
Duplicate	15.00
Certification	25.00
Funeral establishment:	
Original application	300.00
Renewal	150.00
Branch registration	250.00
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
((Financial statement fee 50.00))	
Crematory endorsement registration	140.00
Crematory endorsement renewal	
\$3.20 per cremation performed during previous calendar year.	
<u>Academic intern</u>	<u>No fee</u>
<u>Certificate of removal registration:</u>	
<u>Application</u>	<u>30.00</u>
<u>Renewal</u>	<u>15.00</u>

WSR 05-20-090
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed October 5, 2005, 8:40 a.m., effective November 5, 2005]

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

Purpose: Additional Title 49 Code of Federal Regulations is to be adopted to remain compliant with federal enforcement requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 446-65-010 Commercial motor vehicle regulations/transportation requirements.

Statutory Authority for Adoption: RCW 46.32.020.

Adopted under notice filed as WSR 05-17-129 on August 19, 2005.

A final cost-benefit analysis is available by contacting Ms. Christine Fox, P.O. Box 42614, Olympia, WA 98504-2614, phone (360) 753-3697, fax (360) 586-8233, e-mail Christine.Fox@wsp.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1 [0], Amended [1], Repealed 0.

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

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

Date Adopted: October 4, 2005.

Paul S. Beckley
for John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 05-04-002, filed 1/19/05, effective 2/19/05)

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts, and any amendments thereto, of Title 49 Code of Federal Regulations, for motor carriers used in intrastate or interstate commerce, in their entirety: Parts 350 Commercial motor carrier safety assistance program, 365 Rules governing applications for operating authority, 380 Special training requirements, 387 Minimum levels of financial responsibility for motor carriers, 390 General, 391 Qualification of drivers, 392 Driving of motor vehicles, 393 Parts and accessories necessary for safe operation, 395 Hours of service of drivers, 396 Inspection, repair, and maintenance, 397 Transportation of hazardous materials; driving and parking rules, provided, however, motor carriers operating vehicles with a gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating solely intrastate, and not used to transport hazardous materials in a quantity requiring placarding, are exempt from Parts 390 General, 391 Qualifications of drivers, 392 Driving

of motor vehicles, 395 Hours of service, and 396 Inspection, repair, and maintenance.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate Defense Highways, between fields of the same farm, is excepted from part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR part 172 subpart G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specification packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(4) Copies of Title 49 CFR, parts 390 through 397, now in force are on file at the code reviser's office, Olympia and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and transportation commission offices, and at the United States Department of Transportation, Bureau of Motor Carrier Safety Office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

WSR 05-20-091
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed October 5, 2005, 8:40 a.m., effective November 5, 2005]

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

Purpose: Office of Government and Media Relations and Equipment Standards worked with Representative Jim Clements and other members of the House Transportation Committee, during 2005 legislative session to draft language relating to the use of aftermarket hydraulic or mechanical system to raise or lower the height of a motor vehicle. An error was found in the proposal language and the bill was vetoed. WSP was asked if the proposed language, once corrected, could be incorporated into an existing WAC, yes.

Citation of Existing Rules Affected by this Order: Amending WAC 204-90-120 Suspension.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Adopted under notice filed as WSR 05-17-130 on August 19, 2005.

A final cost-benefit analysis is available by contacting Ms. Christine Fox, P.O. Box 42614, Olympia, WA 98504-2614, phone (360) 753-3697, fax (360) 586-8233, e-mail Christine.Fox@wsp.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: October 4, 2005.

Paul S. Beckley
for John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 98-04-052, filed 1/30/98, effective 3/2/98)

WAC 204-90-120 Suspension. The ground clearance for a special motor vehicle shall be such that the vehicle shall be able to be in motion on its four rims on a flat surface with no other parts of the vehicle touching that surface. Maximum ground clearance for a special motor vehicle shall be determined using the table contained in WAC 204-90-040(6) Bumpers.

The spring mounts and shackles shall be properly aligned and of sufficient strength so as to support the gross weight of the vehicle and provide free travel in an up and down movement under all conditions of operation. Rear coil

spring suspension systems shall incorporate anti-sway devices to control lateral movement.

A special motor vehicle shall have a suspension system that allows movement between the unsprung axles and wheels and the chassis body and shall be equipped with a damping device at each wheel location. The suspension system shall be capable of providing a minimum relative motion of plus and minus 2 inches. When any corner of the vehicle is depressed and released, the damping device shall stop vertical body motion within two cycles.

There shall be no heating or welding of coil springs, leaf springs, or torsion bars.

No special motor vehicle shall be constructed or loaded so that the weight on the wheels of any axle is less than 30% of the gross weight of the vehicle. ~~((No hydraulic system shall be activated while the vehicle is being operated on public roadways.))~~

Except when lawfully participating in a parade permitted by local jurisdiction, activation of an aftermarket hydraulic or mechanical system that raises or lowers the height of a motor vehicle is prohibited while the motor vehicle is in motion on a public roadway with a posted speed limit greater than twenty-five miles per hour and while the vehicle is traveling in excess of fifteen miles per hour. At no time may any portion of any tire of such motor vehicle leave the surface of the roadway or may any portion of the vehicle or component of the hydraulic system used to raise or lower the vehicle cause or emit sparks. A motor vehicle equipped with an aftermarket hydraulic or mechanical system must meet all suspension requirements as outlined in this section. Nothing in this section shall prohibit a county or city from enacting stricter regulations for aftermarket vehicle hydraulics on a public roadway.

A special motor vehicle shall be capable of stable, controlled operation while traversing a slalom-type path passing alternately to the left and right of at least four cones or markers arranged in a straight line and spaced 60 feet apart at a minimum speed of 25 MPH. Body lifts are permitted provided that they are manufactured by an after market manufacturer, designed for the make and model vehicle on which they are installed, and installed according to the manufacturer's recommendations. Body lifts may not use more than a three inch spacer and may not raise the body more than four inches above the frame when all components are installed.

WSR 05-20-105
PERMANENT RULES
DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed October 5, 2005, 10:10 a.m., effective November 5, 2005]

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

Purpose: This rule will streamline the credentialing process by removing unnecessary barriers to licensed chiropractors who are in good standing in other jurisdictions. Specifically, the rule will reduce the amount of time and cost for chiropractors from other jurisdictions to apply for a license by endorsement by as much as \$825.00. The rule also identifies

that a minimum passing score of 95% is required on the written Washington state jurisprudence examination.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-808-135.

Statutory Authority for Adoption: RCW 18.25.0171.

Other Authority: RCW 18.25.040.

Adopted under notice filed as WSR 05-13-186 on June 22, 2005.

A final cost-benefit analysis is available by contacting Karen Kelley, Program Manager, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail karen.kelley@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: September 8, 2005.

Leo Romero, DC, Chair
Chiropractic Quality
Assurance Commission

AMENDATORY SECTION (Amending WSR 00-17-180, filed 8/23/00, effective 9/23/00)

WAC 246-808-135 Licensure by endorsement. RCW 18.25.040 authorizes the commission to grant licensure for endorsement to individuals to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada, if the commission determines an applicant has qualifications that are substantially equivalent to the requirements in this section.

An applicant may apply for licensure by endorsement by submitting to the commission:

(1) A completed application on forms provided by the department;

(2) A fee as specified in WAC 246-808-990; and

(3) Evidence, satisfactory to the commission that the applicant, at the time of application under this section:

(a) ~~((That the license))~~ Is licensed to practice chiropractic in another jurisdiction including, but not limited to, another state, a territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province in Canada;

(b) ~~((That the))~~ Has credentials and qualifications that are substantially equivalent to ((the)) Washington state's requirements ((of the state of Washington)) for licensure by examination ((at the time of application under this section));

~~(c) ((That the jurisdiction in which the applicant is licensed grants similar recognition to licensees in the state of Washington;~~

~~(d) That the applicant))~~ Has been engaged in the full-time practice of chiropractic, or has taught general clinical chiropractic subjects at an accredited school of chiropractic ~~((; as set forth in WAC 246-808-040, in a jurisdiction described in subsection (3)(a) of this section for at least three of the five years immediately preceding application under this section));~~

~~((e) That the applicant))~~ (d) Has not been convicted of a crime, if ~~((such))~~ the crime would be grounds for the ~~((refusal))~~ denial, suspension, or revocation of a license to practice chiropractic in ~~((this))~~ the state ~~((if committed in the state))~~ of Washington;

~~((f) That the applicant's))~~ (e) Has a license to practice chiropractic that is not ~~((; at the time of application under this section;))~~ suspended ~~((or))~~ revoked, or otherwise conditioned or restricted, in any jurisdiction, ~~((based on grounds))~~ which would be grounds for the ~~((refusal))~~ denial, suspension or revocation of a license to practice chiropractic in ~~((this))~~ the state of Washington; and

~~((g))~~ (f) Of passing an open book written jurisprudence examination ~~((and National Board of Chiropractic Examiners Special Purpose Examination for Chiropractors (SPEC)))~~ with a minimum passing score of ninety-five percent.

WSR 05-20-106

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed October 5, 2005, 10:12 a.m., effective November 8, 2005]

Effective Date of Rule: November 8, 2005.

Purpose: This rule provides Department of Fish and Wildlife biologists, officers, and veterinarians with access to controlled substances for use in chemical capture programs. The rule establishes requirements for registration, drug storage, training, records and reports, lists controlled substances approved for use, and describes penalties for violating the rule.

Citation of Existing Rules Affected by this Order:
Amending chapter 246-887 WAC.

Statutory Authority for Adoption: RCW 69.50.320, 18.64.005.

Adopted under notice filed as WSR 05-14-157 on July 6, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-887-260 was amended to remove the reference to "emergency use." Removing the term "emergency" clarifies that the drugs will be used by Department of Fish and Wildlife biologists, officers, and veterinarians in the field on a routine basis. The amended language reflects current business practices.

WAC 246-887-270(4) was amended to require a physical inventory of drugs every twelve months instead of six months.

A final cost-benefit analysis is available by contacting Lisa Salmi, P.O. Box 47863, Olympia, WA 98504-7863,

phone (360) 236-4828, fax (360) 586-4359, e-mail Lisa.Salmi@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: August 10, 2005.

George Roe
Chair

NEW SECTION

WAC 246-887-220 Chemical capture programs. Purpose. Wildlife management programs often require the use of controlled substances for chemical capture programs. The purpose of these rules is to set requirements for the use of controlled substances in department of fish and wildlife chemical capture programs. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or other legitimate purpose.

NEW SECTION

WAC 246-887-230 Registration requirements. (1) The department of fish and wildlife may apply to the board for a limited registration under chapter 69.50 RCW (Controlled Substance Act) to purchase, possess, and administer controlled substances for use in chemical capture programs.

(2) Each department of fish and wildlife field office that stores controlled substances must register with the board. The department of fish and wildlife shall notify the board in writing of the names of individuals who are authorized to possess and administer controlled substances.

(3) In addition, the department of fish and wildlife shall designate one individual at each field office who shall be responsible for the ordering, possession, safe storage, and utilization of controlled substances. The department of fish and wildlife shall notify the board in writing of the name of the designated individual.

(4) Controlled substances obtained under this limited registration shall be for veterinary use only.

NEW SECTION

WAC 246-887-240 Authorized individuals. To be eligible to possess and/or administer controlled substances, individuals must successfully complete an approved training program. The following individuals are authorized to possess and administer controlled substances:

- (1) Department of fish and wildlife officers;
- (2) Department of fish and wildlife biologists; and
- (3) Department of fish and wildlife veterinarians.

NEW SECTION

WAC 246-887-250 Controlled substances training.

The department of fish and wildlife shall establish written policies and procedures to ensure that officers and biologists who administer controlled substances have received sufficient training. The training shall include, at a minimum, the safe handling and administration of controlled substances and the potential hazards. Officers and biologists must be able to demonstrate adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The written policies and procedures shall be approved by the board. Any amendments or deletions to the policies and procedures must be approved by the board prior to implementation.

NEW SECTION

WAC 246-887-260 Storage requirements. Each registered location shall store the controlled substances in a securely locked, substantially constructed cabinet. Keys to the storage area shall be restricted to those persons authorized by the department of fish and wildlife to possess and administer the drugs.

Schedule II controlled substances shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

In addition to field offices, the department of fish and wildlife may allow officers, biologists, and veterinarians to possess a supply of controlled substances for use in the field. The field supply shall be stored in a locked metal box securely attached to a vehicle. The designated officer, biologist, or veterinarian shall be responsible to ensure that the controlled substances are accounted for at all times. All receipts and use of controlled substances from the field supply shall be recorded in a bound logbook with sequentially numbered pages.

NEW SECTION

WAC 246-887-270 Controlled substances records and reports. (1) The department of fish and wildlife shall be responsible for maintaining all records and submitting all reports required by federal or state law or regulation.

(2) A bound logbook with sequentially numbered pages shall be kept documenting the receipt and disposition of all controlled substances. In addition, all receipts and invoices shall be maintained for a period of two years.

(3) All records shall be available for inspection by the board or any officer who is authorized to enforce this chapter.

(4) A physical inventory of approved controlled substances shall be performed, reconciled, and documented every twelve months. The inventory shall be signed and dated by the designated individual.

(5) Any discrepancy in the actual inventory of approved controlled substances shall be documented and reported

immediately to the responsible supervisor who shall investigate the discrepancy. Any discrepancy that has not been corrected within seven days shall be reported in writing to the board of pharmacy and the Drug Enforcement Administration (DEA).

(6) Unwanted or unused controlled substances shall be returned to the manufacturer or destroyed in accordance with the rules and requirements of the board, the Drug Enforcement Administration, and the department of ecology.

NEW SECTION

WAC 246-887-280 Approved controlled substances.

(1) The following controlled substances are hereby designated as approved controlled substances for use by officers and biologists of the department of fish and wildlife for chemical capture programs:

- (a) Ketamine;
- (b) Tiletamine and zolazepam (Telazol);
- (c) Diazepam (Valium);
- (d) Carfentanil (Wildnil); and
- (e) Diprenorphine.

(2) Other controlled substances as approved by rule of the board after consultation with the department of fish and wildlife.

NEW SECTION

WAC 246-887-290 Controlled substances registration disciplinary actions. In addition to any criminal or civil liabilities that may occur, the board may suspend or revoke a registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

WSR 05-20-107

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed October 5, 2005, 10:14 a.m., effective November 5, 2005]

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

Purpose: The purpose of this rule is to implement chapter 268, Laws of 2005. This rule applies a nursing center surcharge fee of five dollars to all licensed practical nurse (LPN) and registered nurse (RN) applications and renewals. The proceeds will be used to provide grants to a nonprofit central nursing resource center.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-990.

Statutory Authority for Adoption: RCW 43.70.010, 43.70.250, and chapter 268, Laws of 2005.

Adopted under notice filed as WSR 05-15-115 on July 18, 2005.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4723, fax (360) 236-4738, e-mail kendra.pitzler@doh.wa.gov.

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

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

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

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

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

Date Adopted: October 5, 2005.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-840-990 Fees and renewal cycle. (1) Applicants for a practical nurse or registered nurse license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse and registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses and registered nurses must pay the renewal fee and the nursing center surcharge fee when renewing licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in chapter 258, Laws of 2003. This attestation will include the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after

the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15). The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(4) The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:

Title of Fee	Fee
Application (initial or endorsement)	\$65.00
License renewal	50.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive renewal	20.00
Expired inactive license reissuance	20.00
Inactive late renewal penalty	10.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
<u>Nursing center surcharge</u>	<u>5.00</u>

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per speciality)	\$65.00
ARNP renewal with or without prescriptive authority (per speciality)	50.00
ARNP late renewal penalty (per speciality)	50.00
ARNP duplicate license (per speciality)	20.00
ARNP written verification of license (per speciality)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	\$130.00
Renewal of registration	90.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

WSR 05-20-108
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 5, 2005, 10:16 a.m., effective November 5, 2005]

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

Purpose: This rule adoption increases the amount of the "clinic subsidy" fee by \$3.10 through June 30, 2007, in response to ESSB 6090 which was passed by the 2005 legislature. Revenue generated through these fees is to be used to support care for infants that have one of five disorders detected through newborn screening. The impact of the disorders detected through newborn screening can range from profound, permanent disability to early death. Effective treatment will prevent these consequences.

Citation of Existing Rules Affected by this Order: Amending WAC 246-650-991.

Statutory Authority for Adoption: RCW 70.83.040.

Adopted under notice filed as WSR 05-15-156 on July 20, 2005.

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

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

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

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

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

Date Adopted: October 5, 2005.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-20-036, filed 9/29/99, effective 10/30/99)

WAC 246-650-991 Specialty clinic support fee. (1) The department has the authority under RCW 70.83.040 to collect a fee for each infant screened to fund specialty clinics that provide treatment services for hemoglobin diseases, phenylketonuria, congenital adrenal hyperplasia (~~and~~), congenital hypothyroidism and other disorders defined by the state board of health under RCW 70.83.020.

(2) The specialty clinic support fee is \$3.50. It is to be collected in conjunction with the screening charge from the parents or other responsible party through the facility where the screening specimen is obtained.

(3) However, effective through June 30, 2007, the department will collect an additional \$3.10 to fund specialty clinics that provide treatment services for other disorders defined by the board under RCW 70.83.020.

