WSR 05-23-008
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 04-07—Filed November 3, 2005, 3:49 p.m.]

Continuance of WSR 05-20-043.

Preproposal statement of inquiry was filed as WSR 04-23-039.

Title of Rule and Other Identifying Information: This rule making will adopt a new rule, chapter 173-333 WAC, Persistent bioaccumulative toxins regulation, that will establish ecology's process and procedures to address the subject of persistent bioaccumulative toxic substances.

Date of Intended Adoption: December 15, 2005.

Submit Written Comments to: Mike Gallagher, PBT Coordinator, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, e-mail mgal461@ecy.wa.gov, fax (360) 407-6884, by November 18, 2005 (5:00 p.m. PST).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To extend public comment period to November 18, 2005.

Name of Proponent: Department of Ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Michael J. Gallagher, Ecology Headquarters, P.O. Box 47600, Olympia, WA 98504, (360) 407-6868.

November 3, 2005
Polly Zehm
Deputy Director

WSR 05-23-018
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 7, 2005, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-089.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses and chapter 308-93 WAC, Vessel registration and certificates of title.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on January 9, 2006, at 10:00 a.m.

Date of Intended Adoption: January 24, 2006.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by January 6, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by January 6, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to clarify language for undercover and confidential vehicle and vessel license application procedures. The change to the existing rules is to clarify language and add to the vehicle rule the inclusion of trailers, snowmobiles and other off-road vehicles.

Reasons Supporting Proposal: To clarify language and to define the types of vehicles that are included in undercover and confidential license plate program. The proposed rules will make the rule easier for persons to use.

Statutory Authority for Adoption: RCW 46.08.066 and 88.02.035.

Statute Being Implemented: Same.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Angela Johnson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3756; and Enforcement: Deborah McCurley, 1125 Washington Street S.E., Olympia, WA, (360) 902-3754.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

November 2, 2005
D. McCurley, Administrator
Title and Registration Services

AMENDATORY SECTION (Amending WSR 02-22-004, filed 10/24/02, effective 11/24/02)

WAC 308-93-241 Undercover and confidential vessel registration—Application procedures. (1) **What are undercover and confidential vessel registrations?** ((~~Undercover and confidential registrations are nonexempt~~)) They are vessel registrations and decals assigned only to vessels owned or operated by government agencies as identified in RCW 88.02.035.

(2) **When is an undercover or confidential vessel registration issued?** An undercover or confidential vessel registration is issued to government agencies when the vessel is being used in confidential, investigative, or undercover work.

(3) **How are undercover and confidential vessels registered?** ((~~Government owned or operated vessels may be registered in one of the following ways:~~

~~(a) If registered with an undercover vessel registration number, the record will show fictitious names and addresses on all department records subject to public disclosure; or~~

~~(b) If registered with a confidential vessel registration number, the record will show the government agency name and address on all department records subject to public disclosure.~~

~~(3) Is a government agency responsible for ensuring safeguards to select a fictitious name and address for undercover vessel registrations? Yes, government agency's must certify on the application that precautions have been taken to ensure that the use of citizens' names and legitimate licensed Washington businesses has not been used.~~

~~(4)~~)) (a) An undercover vessel registration record will show fictitious names and addresses on all department records subject to public disclosure.

(b) A confidential vessel registration record will show the government agency name and address on all department records subject to public disclosure.

(4) **Who is responsible for verifying that only fictitious names and addresses are used for undercover vessel registrations?** The individual signing the application.

(5) **How does a government agency apply for an undercover or confidential vessel registration?** ((~~A government agency requesting an undercover/confidential vessel registration must provide:~~))

(a) A completed application form approved by the department ((~~and~~)) needs to be signed by the government agency head or designated contact person. ((~~The agency must indicate on the application form which type of registration is needed (undercover or confidential);~~))

(b) A copy of the current ((~~certificate of ownership~~)) title, registration ((~~certificate~~)) or other documents approved by the department ((~~showing~~)) of licensing that proves the vessel is owned or operated by the government agency.

AMENDATORY SECTION (Amending WSR 02-21-118, filed 10/23/02, effective 11/23/02)

WAC 308-96A-080 Undercover and confidential license plates—Application procedures. (1) **What are undercover and confidential license plates?**

(((~~(a) An undercover license plate is issued to local, state, and federal government agencies for law enforcement purposes only to be used in confidential, investigative, or undercover work, confidential public health work, and confidential public assistance fraud or support investigations.~~

~~(b) A confidential license plate is issued to any elected state official for use on official business. Confidential plates are also issued when necessary for the personal security of any other public officer or public employee for the conduct of official business for the period of time that the personal security of such state official, public officer, or other public employee may require.~~

~~Undercover and confidential license plates are standard issue license plates assigned only to vehicles owned or operated by government agencies as identified in RCW 46.08.066.~~)) They are standard issue license plates assigned only to vehicles owned or operated by government agencies as identified in RCW 46.08.066. These vehicles include, but are not limited to, off road vehicles, trailers, and snowmobiles.

(2) ((~~How are undercover and confidential vehicles registered? Government owned or operated vehicles may be registered in one of the following ways:~~

~~(a) If registered with an undercover license plate, the record will show fictitious names and addresses on all department records subject to public disclosure; or~~

~~(b) If registered with a confidential license plate, the record will show the government agency name and address on all department records subject to public disclosure.~~)) **When is an undercover or confidential license plate issued?** An undercover or confidential license plate is issued to government agencies when being used in confidential, investigative, or undercover work.

(3) ((~~Is a government agency responsible for ensuring that safeguards are used to select a fictitious name and address for undercover vehicle registrations? Yes, government agencies shall certify on the application that precautions have been taken to ensure that names and legitimate licensed Washington businesses have not been used.~~)) **When are undercover and confidential license plates used?**

(a) These plates are used for official business by government agencies or any state elected official.

(b) For the personal security of any other public officer, or public employee, for use on an unmarked publicly owned or controlled vehicle for the conduct of business for the period of time required.

(4) ((~~How does a government agency apply for undercover or confidential license plates? A government agency requesting undercover or confidential license plates shall provide:~~

~~(a) A completed application form approved by the department and signed by the government agency head or designated contact person. The agency shall indicate on the application form which type of registration is requested (undercover or confidential).~~

~~(b) A copy of the current certificate of ownership, registration certificate or other documents approved by the department showing the vehicle is owned or operated by the government agency.~~)) **How are undercover and confidential vehicles registered?**

(a) An undercover license plate record will show fictitious names and addresses on all department records subject to public disclosure.

(b) A confidential license plate record will show the government agency name and address on all department records subject to public disclosure.

(5) **Who is responsible for verifying that only fictitious names and addresses are used for undercover vehicle registrations?** The individual signing the application.

(6) **How does a government agency apply for undercover or confidential license plates?**

(a) A completed application form approved by the department needs to be signed by the government agency head or designated contact person.

(b) A copy of the current title, registration or other documents approved by the department of licensing that proves the vehicle is owned or operated by the government agency.

WSR 05-23-027
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed November 8, 2005, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-04-082.

Title of Rule and Other Identifying Information: Chapter 388-538 WAC, Managed care.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling 360-664-6097), on December 27, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail, fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. December 27, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant by December 23, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following changes were made to this chapter:

- Changed all references of "Medical Assistance Administration (MAA)" to "the department";
- Added a definition for "enrollees representative";
- Clarified where in the department to send a completed enrollment form;
- Added the requirement of being a "recognized urban Indian health center or tribal clinic" to the primary care case management (PCCM) provider requirements;
- Added "delivery case rate payment" under the managed care payment section;
- Clarified that the department covers medically necessary categorically needy services that are excluded from coverage in the managed care organization's (MCO) contract;
- Clarified ninety-day coverage policy for enrollees outside their service area for emergency care and for medically necessary covered benefits that cannot wait;
- Clarified that the MCO must acknowledge receipt of grievances either orally or in writing within five working days and each appeal in writing within five working days;
- Removed the incorrect reference to "provider" under WAC 388-538-110 (7)(f)(v) and replaced it with enrollee's representative;
- Removed the word "appeal" and replaced it with "hearing requests" under WAC 388-538-110 (7)(m) and (n);
- Removed the word "appeal" and replaced it with "hearing requests" under WAC 388-538-112 [(3)](a) and (b);
- Added contract language on MCO oversight of delegated entities responsible for any delegated activity under quality of care;
- Added language on individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;
- Added contract language on noncompliance with any contractual, state, or federal requirements.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.522.

Statute Being Implemented: RCW 74.09.522.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1306; Implementation and Enforcement: Penny Dow, (360) 725-1636 and Michael Paulson, (360) 725-1641, P.O. Box 45530, Olympia, WA 98504-5530.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not affect small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Penny Dow/Michael Paulson, Division of Program Support-MCCM, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1636/(360) 725-1641, e-mail DOWPL@dshs.wa.gov or paulsmj@dshs.wa.gov.

November 3, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-050 Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter. References to managed care in this chapter do not apply to mental health managed care administered under chapter 388-865 WAC.

"Action" ((~~means~~)):

(1) The denial or limited authorization of a requested service, including the type or level of service;

(2) The reduction, suspension, or termination of a previously authorized service;

(3) The denial, in whole or in part, of payment for a service;

(4) The failure to provide services in a timely manner, as defined by the state; or

(5) The failure of a((~~n~~)) managed care organization (MCO) to act within the time frames provided in 42 C.F.R. 438.408(b).

"Ancillary health services" ((~~means~~)) - Health services ordered by a provider, including but not limited to, laboratory services, radiology services, and physical therapy.

"Appeal" ((~~means~~)) - A request by an enrollee or provider ((~~or covered enrollee~~)) with written permission of an enrollee for reconsideration of an action.

"Assign" or **"assignment"** ((~~means that the medical assistance administration (MAA)~~)) - The department selects ((~~a managed care organization (MCO)~~)) an MCO or primary care case management (PCCM) provider to serve a client who has ((~~failed to~~)) not selected an MCO or PCCM provider.

"Auto enrollment" ((~~means that MAA~~)) - When the department automatically enrolls a client into an MCO in his or her area((~~, rather than waiting for the client to enroll with an MCO~~)).

"Basic health" or **"BH"** ((~~means~~)) The health care program authorized by chapter 70.47 RCW and administered by the health care authority (HCA). ((~~MAA considers basic~~

~~health to be third-party coverage, however, this does not include basic health plus (BH+).~~))

"Basic Health Plus" - Refer to WAC 388-538-065.

"Children with special health care needs" ((~~means~~)) - Children under nineteen years of age identified by ((~~DSHS~~)) the department as having special health care needs. This includes:

(1) Children designated as having special health care needs by the department of health (DOH) and ((~~served~~)) receiving services under the Title V program;

(2) Children ((~~who meet disability criteria of~~)) eligible for Supplemental Security Income under Title 16 of the Social Security Act (SSA); and

(3) Children who are in foster care or who are served under subsidized adoption.

"Client" ((~~means~~)) - For the purpose of this chapter, an individual eligible for any medical program, including managed care programs, but who is not enrolled with an MCO or PCCM provider. In this chapter, "client" refers to a person before he or she is enrolled in managed care, while "enrollee" refers to an individual eligible for any medical program who is enrolled in managed care.

"Department" - The department of social and health services (DSHS).

"Emergency medical condition" ((~~means~~)) - A condition meeting the definition in 42 C.F.R. 438.114(a).

"Emergency services" ((~~means~~)) - Services ((~~as~~)) defined in 42 C.F.R. 438.114(a).

"End enrollment" ((~~means~~)) - An enrollee is currently enrolled in managed care, either with an MCO or with a PCCM provider, and ((~~requests to discontinue enrollment and~~)) his or her enrollment is discontinued and he or she returns to the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130. This is also referred to as "disenrollment."

"Enrollee" ((~~means~~)) - An individual eligible for any medical program who is enrolled in managed care through an MCO or PCCM provider that has a contract with the state.

"Enrollees representative" - An individual with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

"Enrollees with special health care needs" ((~~means~~)) - Persons having chronic and disabling conditions, including persons with special health care needs that meet all of the following conditions:

(1) Have a biologic, psychologic, or cognitive basis;

(2) Have lasted or are virtually certain to last for at least one year; and

(3) Produce one or more of the following conditions stemming from a disease:

(a) Significant limitation in areas of physical, cognitive, or emotional function;

(b) Dependency on medical or assistive devices to minimize limitation of function or activities; or

(c) In addition, for children, any of the following:

(i) Significant limitation in social growth or developmental function;

(ii) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or

(iii) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"Exemption" ((~~means~~)) - Department approval of a ((~~client, not currently enrolled in managed care, makes a preenrollment request~~)) client's pre-enrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130.

"Grievance" ((~~means~~)) - An expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Grievance system" ((~~means~~)) - The overall system that includes grievances and appeals handled at the MCO level and access to the ((~~state fair~~)) department's hearing process.

"Health care service" or **"service"** ((~~means~~)) - A service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

((~~**"Healthy Options contract"** or **"HO contract"** means the agreement between DSHS and an MCO to provide prepaid contracted services to enrollees.~~))

"Healthy Options program" or **"HO program"** ((~~means~~)) - The ((~~MAA~~)) department's prepaid managed care health program for Medicaid-eligible clients and clients enrolled in the state children's health insurance program (SCHIP).

"Managed care" ((~~means~~)) - A comprehensive health care delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

"Managed care contract" - The agreement between the department and an MCO to provide prepaid contracted services to enrollees.

"Managed care organization" or **"MCO"** ((~~means~~)) - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with ((~~DSHS~~)) the department under a comprehensive risk contract to provide prepaid health care services to eligible ((~~MAA~~)) clients under the department's managed care programs.

"Mandatory enrollment" - The department's requirement that a client enroll in managed care.

"Mandatory service area" ((~~means~~)) - A service area in which eligible clients are required to enroll in an MCO.

"Medicare/Medicaid Integration Program" or **"MMIP"** ((~~means DSHS's~~)) - The department's prepaid managed care program that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare only or eligible for Medicare and Medicaid. Clients eligible for Medicaid only are not eligible for this program.

"Nonparticipating provider" ((~~means a person or entity~~)) - A healthcare provider that does not have a written agreement with an MCO but that provides MCO-contracted health care services to managed care enrollees with the MCO's authorization ((~~of the MCO. The MCO is solely responsible for payment for MCO-contracted health care services that are authorized by the MCO and provided by nonparticipating providers~~)).

"Participating provider" ((~~means a person or entity~~)) - A healthcare provider with a written agreement with an MCO to provide health care services to the MCO's managed care enrollees. A participating provider must look solely to the MCO for payment for such services.

"Primary care case management" or **"PCCM"** ((~~means~~)) - The health care management activities of a provider that contracts with the department to provide primary health care services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"Primary care provider" or **"PCP"** ((~~means~~)) - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"Prior authorization" or **"PA"** ((~~means~~)) A process by which enrollees or providers must request and receive ((~~MAA~~)) department approval for services provided through ((~~MAA's~~)) the department's fee-for-service ((~~program~~)) system, or MCO approval for services provided through the MCO, for certain medical services, equipment, drugs, and supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization. See WAC 388-501-0165.

"Timely" - In relation to the provision of services, means an enrollee has the right to receive medically necessary health care as expeditiously as the enrollee's health condition requires. In relation to authorization of services and grievances and appeals, means ((~~in accordance with~~)) according to the department's managed care program contracts and the ((~~time frames~~)) timeframes stated in this chapter.

"Washington Medicaid Integration Partnership" or **"WMIP"** ((~~means~~)) - The managed care program that is designed to integrate medical, mental health, chemical dependency treatment, and long-term care services into a single coordinated health plan for eligible aged, blind, or disabled clients.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-060 Managed care and choice. (1) ((~~MAA~~)) Except as provided in subsection (2) of this section, the department requires a client to enroll in managed care when that client ((~~meets all of the following conditions~~)):

(a) Is eligible for one of the medical programs for which ((~~clients must enroll in managed care~~)) enrollment is mandatory;

(b) Resides in an area((~~, determined by the medical assistance administration (MAA),~~)) where ((~~clients must~~)) enrollment is mandatory ((~~in managed care~~)); and

(c) Is not exempt from managed care enrollment ((~~as determined by MAA, consistent with WAC 388-538-130, and any related fair hearing has been held and decided; and~~

~~(d) Has not had managed care enrollment ended by MAA~~)) or the department has not ended the client's managed care enrollment, consistent with WAC 388-538-130, and any related hearing has been held and decided.

(2) American Indian/Alaska Native (AI/AN) clients who meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants may choose one of the following:

(a) Enrollment with a managed care organization (MCO) available in their area;

(b) Enrollment with an Indian or tribal primary care case management (PCCM) provider available in their area; or

(c) ((~~MAA's~~)) The department's fee-for-service system.

(3) A client may enroll with an MCO or PCCM provider by calling ((~~MAA's~~)) the department's toll-free enrollment line or by sending a completed enrollment form to ((~~MAA~~)) the department's unit responsible for managed care enrollment as listed on the department's enrollment form.

(a) ((~~Except as provided in subsection (2) of this section for clients who are AI/AN,~~)) A client ((~~required to enroll in managed care~~)) must enroll with an MCO or PCCM provider available in the area where the client lives.

(b) All family members must either enroll with the same MCO or enroll with PCCM providers.

(c) Enrollees may request an MCO or PCCM provider change at any time.

(d) When a client requests enrollment with an MCO or PCCM provider, ((~~MAA~~)) the department enrolls a client effective the earliest possible date given the requirements of ((~~MAA's~~)) the department's enrollment system. ((~~MAA~~)) The department does not enroll clients retrospectively.

(4) ((~~MAA~~)) The department assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client has family members enrolled with an MCO, the client is enrolled with that MCO;

(b) If the client does not have family members enrolled with an MCO that is currently under contract with ((~~DSHS~~)) the department, and the client was previously enrolled with the MCO or PCCM provider, and ((~~DSHS~~)) the department can identify the previous enrollment, the client is re-enrolled with the same MCO or PCCM provider;

(c) If a client does not choose an MCO or a PCCM provider, but indicates a preference for a provider to serve as the client's primary care provider (PCP), ((~~MAA~~)) the department attempts to contact the client to complete the required choice. If ((~~MAA~~)) the department is not able to contact the client in a timely manner, ((~~MAA~~)) the department documents the attempted contacts and, using the best information available, assigns the client as follows. If the client's preferred PCP is:

(i) Available with one MCO, ((~~MAA~~)) the department assigns the client in the MCO where the client's PCP provider is available. The MCO is responsible for PCP choice and assignment;

(ii) Available only as a tribal PCCM provider and the client meets the criteria of subsection (2) of this section, ((~~MAA~~)) the department assigns the client to the preferred provider as the client's PCCM provider;

(iii) Available with multiple MCOs or through an MCO and as a PCCM provider, ((~~MAA~~)) the department assigns the client to an MCO as described in (d) of this subsection;

(iv) Not available through any MCO or as a PCCM provider, ((~~MAA~~)) the department assigns the client to an MCO or PCCM provider as described in (d) of this subsection.

(d) If the client cannot be assigned according to (a), (b), or (c) of this subsection, ((~~MAA~~)) the department assigns the client as follows:

(i) If an AI/AN client does not choose an MCO or PCCM provider, ((~~MAA~~)) the department assigns the client to a tribal PCCM provider if that client lives in a zip code served by a tribal PCCM provider. If there is no tribal PCCM provider in the client's area, the client continues to be served by ((~~MAA's~~)) the department's fee-for-service system. A client assigned under this subsection may request to end enrollment at any time.

(ii) If a non-AI/AN client does not choose an MCO ((~~or PCCM~~)) provider, ((~~MAA~~)) the department assigns the client to an MCO ((~~or PCCM provider~~)) available in the area where the client lives. The MCO is responsible for PCP choice and assignment. ((~~An MCO must meet the healthy options (HO) contract's access standards unless the MCO has been granted an exemption by MAA.~~))

(iii) For clients who are new recipients to medical assistance or who have had a break in eligibility of greater than two months, ((~~MAA~~)) the department sends a written notice to each household of one or more clients who are assigned to an MCO or PCCM provider. The assigned client has ten calendar days to contact ((~~MAA~~)) the department to change the MCO or PCCM provider assignment before enrollment is effective. The notice includes the name of the MCO or PCCM provider to which each client has been assigned, the effective date of enrollment, the date by which the client must respond in order to change ((~~MAA's~~)) the assignment, and the toll-free telephone number of either:

(A) The MCO for enrollees assigned to an MCO; or

(B) ((~~MAA~~)) The department for enrollees assigned to a PCCM provider.

(iv) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent.

(5) An MCO enrollee's selection of the enrollee's PCP or the enrollee's assignment to a PCP occurs as follows:

(a) MCO enrollees may choose:

(i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or

(ii) Different PCPs or clinics participating with the ((~~same~~)) enrollee's MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in the relevant managed care contract if the enrollee does not choose a PCP or clinic;

(c) MCO enrollees may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request; or

(d) In accordance with this subsection, MCO enrollees may file a grievance with the MCO and may change plans if the MCO ((~~denies~~)) does not approve an enrollee's request to change PCPs or clinics.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-061 Voluntary enrollment into managed care ((~~provided through the~~)) - Washington Medicaid Integration Partnership (WMIP) or Medicare/Medicaid Integration Program (MMIP). (1) The purpose of this section is to describe the managed care requirements for clients eligible for either the Washington Medicaid Integration Partnership (WMIP) or the Medicare/Medicaid Integration Program (MMIP).

(2) Unless otherwise stated in this section, all of the provisions of chapter 388-538 WAC apply to clients enrolled in WMIP and MMIP.

(3) The following sections of chapter 388-538 WAC do not apply to WMIP enrollees or MMIP enrollees:

(a) WAC 388-538-060. However, WAC 388-538-060(5), describing enrollees' ability to choose their PCP, does apply to WMIP enrollees and MMIP enrollees;

(b) WAC 388-538-063;

(c) WAC 388-538-065;

(d) WAC 388-538-068; and

(e) WAC 388-538-130. However, WAC 388-538-130 (3) and (4), describing the process used when ((~~MAA~~)) the department receives a request from an MCO to remove an enrollee from enrollment in managed care, do apply to WMIP enrollees and MMIP enrollees. Also, WAC 388-538-130(9), describing the MCO's ability to refer enrollees to ((~~MAA's~~)) the department's "Patient Review and Restriction" program, does apply to WMIP enrollees and MMIP enrollees.

(4) The process for enrollment of WMIP and MMIP clients is as follows:

(a) Enrollment in WMIP and MMIP is voluntary, subject to program limitations in subsection (b) and (c) of this section.

(b) For WMIP, ((~~MAA~~)) the department automatically enrolls clients, with the exception of American Indian/Alaska natives and clients eligible for both Medicare and Medicaid, when they:

(i) Are aged, blind, or disabled;

(ii) Are twenty-one years of age or older; and

(iii) Receive categorically needy medical assistance.

(c) For MMIP, clients may enroll when they:

(i) Are sixty-five years of age or older; and

(ii) Receive Medicare and/or Medicaid.

(d) American Indian/Alaska native (AI/AN) clients and clients who are eligible for Medicare and Medicaid who meet the eligibility criteria in (b) or (c) of this subsection may voluntarily enroll or end enrollment in WMIP or MMIP at any time.

(e) ((~~MAA~~)) The department will not enroll a client in WMIP or MMIP, or will end an enrollee's enrollment in WMIP or MMIP when the client has, or becomes eligible for, CHAMPUS/TRICARE or any other third-party health care coverage that would require ((~~exemption or involuntary disenrollment from~~)) the department to either exempt the client from enrollment in managed care or end the enrollees enrollment in managed care.

(f) A client or enrollee in WMIP or MMIP or the client's or enrollee's representative may end enrollment from the MCO at any time without cause. The client may then reenroll

at any time with the MCO. ((~~MAA~~)) The department ends enrollment for clients prospectively to the first of the month following request to end enrollment, except as provided in subsection (g) of this section.

(g) Clients may request that ((~~MAA~~)) the department retroactively end enrollment from WMIP and MMIP. On a case-by-case basis, ((~~MAA~~)) the department may retroactively end enrollment from WMIP and MMIP when, in ((~~MAA's~~)) the department's judgment:

(i) The client or enrollee has a documented and verifiable medical condition; and

(ii) Enrollment in managed care could cause an interruption of on-going treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(5) In addition to the scope of medical care described in WAC 388-538-095, WMIP and MMIP are designed to include the following services:

(a) For WMIP enrollees - mental health, chemical dependency treatment, and long-term care services; and

(b) For MMIP enrollees - long-term care services.

(6) ((~~MAA~~)) The department sends each client written information about covered services when the client is eligible to enroll in WMIP or MMIP, and any time there is a change in covered services. In addition, ((~~MAA~~)) the department requires MCOs to provide new enrollees with written information about covered services. This notice informs the client about the right to ((~~disenroll~~)) end enrollment and how to do so.

AMENDATORY SECTION (Amending WSR 04-15-003, filed 7/7/04, effective 8/7/04)

WAC 388-538-063 Mandatory enrollment in managed care for GAU clients. (1) The purpose of this section is to describe the department's managed care requirement for general assistance unemployable (GAU) clients mandated by the Laws of 2003, chapter 25, section 209(15).

(2) The only sections of chapter 388-538 WAC that apply to GAU clients described in this section are incorporated by reference into this section.

(3) To receive ((~~medical assistance administration (MAA)~~)) department-paid medical care, GAU clients must enroll in a managed care plan as required by WAC 388-505-0110(7) when they reside in a county designated as a mandatory managed care plan county.

(4) GAU clients are exempt from mandatory enrollment in managed care if they:

(a) Are American Indian or Alaska Native (AI/AN); and

(b) Meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) In addition to subsection (4), ((~~MAA~~)) the department will exempt a GAU client from mandatory enrollment in managed care or end an enrollee's enrollment in managed care in accordance with WAC 388-538-130(3) and 388-538-130(4).

(6) On a case-by-case basis, ((~~MAA~~)) the department may grant a GAU client's request for exemption from managed care or a GAU enrollee's request to end enrollment when, in ((~~MAA's~~)) the department's judgment:

(a) The client or enrollee has a documented and verifiable medical condition; and

(b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(7) ((~~MAA~~)) The department enrolls GAU clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. ((~~MAA~~)) The department does not enroll clients in managed care on a retroactive basis.

(8) Managed care organizations (MCOs) that contract with ((~~MAA~~)) the department to provide services for GAU clients must meet the qualifications and requirements in WAC 388-538-067 and 388-538-095 (3)(a), (b), (c), and (d).

(9) ((~~MAA~~)) The department pays MCOs capitated premiums for GAU enrollees based on legislative allocations for the GAU program.

(10) GAU enrollees are eligible for the scope of care as described in WAC 388-529-0200 for medical care services (MCS). Other scope of care provisions that apply:

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005;

(b) MCOs cover the services included in the managed care contract for GAU enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for GAU enrollees;

(c) ((~~MAA~~)) The department pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for GAU enrollees; and

(d) ((~~Even if a service is covered by MAA on a fee-for-service basis, it is the MCO, and not MAA, from whom a GAU enrollee must obtain prior authorization before receiving the service; and~~

~~(e)~~)) A GAU enrollee may obtain emergency services in accordance with WAC 388-538-100.

(11) ((~~MAA~~)) The department does not pay providers on a fee-for-service basis for services covered under the MCO's contract for GAU enrollees, even if the MCO has not paid for the service, regardless of the reason. The MCO is solely responsible for payment of MCO-contracted health care services that are:

(a) Provided by an MCO-contracted provider; or

(b) Authorized by the MCO and provided by nonparticipating providers.

(12) The following services are not covered for GAU enrollees unless the MCO chooses to cover these services at no additional cost to ((~~MAA~~)) the department:

(a) Services that are not medically necessary;

(b) Services not included in the medical care services scope of care;

(c) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and

(d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

(13) A provider may bill a GAU enrollee for noncovered services described in subsection (12), if the requirements of WAC 388-502-0160 and 388-538-095(5) are met.

(14) The grievance and appeal process found in WAC 388-538-110 applies to GAU enrollees described in this section.

(15) The ((~~fair~~)) hearing process found in chapter 388-02 WAC and WAC 388-538-112 applies to GAU enrollees described in this section.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-065 Medicaid-eligible basic health (BH) enrollees. (1) Certain children and pregnant women who have applied for, or are enrolled in, managed care through basic health (BH) (chapter 70.47 RCW) are eligible for Medicaid under pediatric and maternity expansion provisions of the Social Security Act. The ((~~medical assistance administration (MAA)~~)) department determines Medicaid eligibility for children and pregnant women who enroll through BH.

(2) Eligible children are enrolled in the basic health plus program and eligible pregnant women are enrolled in the maternity benefits program.

(3) The administrative rules and regulations that apply to managed care enrollees also apply to Medicaid-eligible clients enrolled through BH, except as follows:

(a) The process for enrolling in managed care described in WAC 388-538-060(3) does not apply since enrollment is through the health care authority, the state agency that administers BH;

(b) American Indian/Alaska native (AI/AN) clients cannot choose fee-for-service or PCCM as described in WAC 388-538-060(2). They must enroll in a BH-contracted MCO.

(c) If a Medicaid eligible client applying for BH Plus does not choose an MCO prior to the department's eligibility determination, the client is transferred from BH Plus to the department ((~~of social and health services (DSHS)~~)) for assignment to managed care.

(d) The department does not consider the basic health plus and the maternity benefits programs to be third party.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-067 Managed care provided through managed care organizations (MCOs). (1) Managed care organizations (MCOs) may contract with the department ((~~of social and health services (DSHS)~~)) to provide prepaid health care services to eligible clients. The MCOs must meet the qualifications in this section to be eligible to contract with ((~~DSHS~~)) the department. The MCO must:

(a) Have a certificate of registration from the office of the insurance commissioner (OIC) that allows the MCO to provide the services in subsection (1) of this section;

(b) Accept the terms and conditions of ((~~DSHS' HO~~)) the department's managed care contract;

(c) Be able to meet the network and quality standards established by ((~~DSHS~~)) the department; and

(d) Accept the prepaid rates published by ((~~DSHS~~)) the department.

(2) ((~~DSHS~~)) The department reserves the right not to contract with any otherwise qualified MCO.

AMENDATORY SECTION (Amending WSR 02-01-075, filed 12/14/01, effective 1/14/02)

WAC 388-538-068 Managed care provided through primary care case management (PCCM). (((~~(1)~~))) A provider may contract with ((~~DSHS~~)) the department as a primary care case management (PCCM) provider to ((~~provide~~)) coordinate health care services to eligible ((~~medical assistance administration (MAA)~~)) clients under ((~~MAA's~~)) the department's managed care program. The PCCM provider or the individual providers in a PCCM group or clinic must:

(((~~a~~))) (1) Have a core provider agreement with ((~~DSHS~~)) the department;

(((~~(b) Hold a current license to practice as a physician, certified nurse midwife, or advanced registered nurse practitioner in the state of Washington;~~)))

(2) Be a recognized urban Indian health center or tribal clinic;

(((~~c~~))) (3) Accept the terms and conditions of ((~~DSHS'~~)) the department's PCCM contract;

(((~~d~~))) (4) Be able to meet the quality standards established by ((~~DSHS~~)) the department; and

(((~~e~~))) (5) Accept PCCM rates published by ((~~DSHS~~)) the department.

(((~~(2) DSHS reserves the right not to contract for PCCM with an otherwise qualified provider.~~)))

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-070 Managed care payment. (1) The ((~~medical assistance administration (MAA)~~)) department pays managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been determined using generally accepted actuarial methods;

(b) Are based on historical analysis of financial cost and/or rate information; and

(c) Are paid based on legislative allocations.

(2) ((~~MAA~~)) The department pays primary care case management (PCCM) providers a monthly case management fee according to contracted terms and conditions.

(3) ((~~MAA~~)) The department does not pay providers ((~~on a~~)) under the fee-for-service ((~~basis~~)) system for services that are the MCO's responsibility, even if the MCO has not paid for the service for any reason. The MCO is solely responsible for payment of MCO-contracted health care services((~~:~~

~~(a) Provided by an MCO-contracted provider; or~~

~~(b) That are authorized by the MCO and provided by nonparticipating providers~~)).

(4) ((~~MAA~~)) The department pays an ((~~additional monthly amount, known as an~~)) enhancement rate((~~,~~)) to federally qualified health care centers (FQHC) and rural health clinics (RHC) for each client enrolled with MCOs through the FQHC or RHC. ((~~MCOs may contract with FQHCs and RHCs to provide services. FQHCs and RHCs receive an~~))

The enhancement rate from ((~~MAA on a per member, per month basis~~)) the department is in addition to the negotiated payments ((~~they~~)) FQHCs and RHCs receive from the MCOs for services provided to MCO enrollees.

(5) The department pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-095 Scope of care for managed care enrollees. (1) Managed care enrollees are eligible for the scope of medical care as described in WAC 388-529-0100 for categorically needy clients.

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005.

(b) The managed care organization (MCO) covers the services included in the MCO contract for MCO enrollees. ((~~In addition,~~)) MCOs may, at their discretion, cover additional services not required under the MCO contract. However, the department may not require the MCO to cover any additional services outside the scope of services negotiated in the MCO's contract with the department.

(c) The ((~~medical assistance administration (MAA)~~)) department covers ((~~the~~)) medically necessary((~~, covered~~)) categorically needy services ((~~not included in the MCO contract for MCO enrollees~~)) described in chapter 388-529 WAC that are excluded from coverage in the MCO contract.

(d) ((~~MAA~~)) The department covers services ((~~on a~~)) through the fee-for-service ((~~basis~~)) system for enrollees with a primary care case management (PCCM) provider. Except for emergencies, the PCCM provider must either provide the covered services needed by the enrollee or refer the enrollee to other providers who are contracted with ((~~MAA~~)) the department for covered services. The PCCM provider is responsible for instructing the enrollee regarding how to obtain the services that are referred by the PCCM provider. The services that require PCCM provider referral are described in the PCCM contract. ((~~MAA~~)) The department informs enrollees about the enrollee's program coverage, limitations to covered services, and how to obtain covered services.

(e) MCO enrollees may obtain certain services from either a MCO provider or from a medical assistance provider with a ((~~DSHS~~)) department core provider agreement without needing to obtain a referral from the PCP or MCO. These services are described in the managed care contract, and are communicated to enrollees by ((~~MAA~~)) the department and MCOs as described in (f) of this subsection.

(f) ((~~DSHS~~)) The department sends each client written information about covered services when the client is required to enroll in managed care, and any time there is a change in covered services. This information describes covered services, which services are covered by ((~~MAA~~)) the department, and which services are covered by MCOs. In addition, ((~~DSHS~~)) the department requires MCOs to provide new enrollees with written information about covered services.

(2) For services covered by ((~~MAA~~)) the department through PCCM contracts for managed care:

(a) ((~~MAA~~)) The department covers medically necessary services included in the categorically needy scope of care and rendered by providers ((~~with~~)) who have a current ((~~department of social and health services (DSHS)~~)) core provider agreement with the department to provide the requested service;

(b) ((~~MAA~~)) The department may require the PCCM provider to obtain authorization from ((~~MAA~~)) the department for coverage of nonemergency services;

(c) The PCCM provider determines which services are medically necessary;

(d) An enrollee may request a ((~~fair~~)) hearing for review of PCCM provider or ((~~MAA~~)) the department coverage decisions (see WAC 388-538-110); and

(e) Services referred by the PCCM provider require an authorization number in order to receive payment from ((~~MAA~~)) the department.

(3) For services covered by ((~~MAA~~)) the department through contracts with MCOs:

(a) ((~~MAA~~)) The department requires the MCO to subcontract with a sufficient number of providers to deliver the scope of contracted services in a timely manner. Except for emergency services, MCOs provide covered services to enrollees through their participating providers;

(b) ((~~MAA~~)) The department requires MCOs to provide new enrollees with written information about how enrollees may obtain covered services;

(c) For nonemergency services, MCOs may require the enrollee to obtain a referral from the primary care provider (PCP), or the provider to obtain authorization from the MCO, according to the requirements of the MCO contract;

(d) MCOs and their providers determine which services are medically necessary given the enrollee's condition, according to the requirements included in the MCO contract;

(e) ((~~An enrollee may appeal an MCO action using the MCO's appeal process, as described in WAC 388-538-110. After exhausting the MCO's appeal process, an enrollee may also request a department fair hearing for review of an MCO action as described in WAC 388-538-112~~)) The department requires the MCO to coordinate benefits with other insurers in a manner that does not reduce benefits to the enrollee or result in costs to the enrollee;

(f) A managed care enrollee does not need a PCP referral to receive women's health care services, as described in RCW 48.42.100 from any women's health care provider participating with the MCO. Any covered services ordered and/or prescribed by the women's health care provider must meet the MCO's service authorization requirements for the specific service.

(g) For enrollees temporarily outside their MCOs service area, the MCO is required to cover enrollees for up to ninety days for emergency care and medically necessary covered benefits that cannot wait until the enrollees return to their service area.

(4) Unless the MCO chooses to cover these services, or an appeal, independent review, or a ((~~fair~~)) hearing decision reverses an MCO or ((~~MAA~~)) department denial, the following services are not covered:

(a) For all managed care enrollees:

(i) Services that are not medically necessary;

(ii) Services not included in the categorically needy scope of services; and

(iii) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions.

(b) For MCO enrollees:

(i) Services received from a participating specialist that require prior authorization from the MCO, but were not authorized by the MCO; and

(ii) Services received from a nonparticipating provider that require prior authorization from the MCO that were not authorized by the MCO. All nonemergency services covered under the MCO contract and received from nonparticipating providers require prior authorization from the MCO.

(c) For PCCM enrollees, services that require a referral from the PCCM provider as described in the PCCM contract, but were not referred by the PCCM provider.

(5) A provider may bill an enrollee for noncovered services as described in subsection (4) of this section, if the requirements of WAC 388-502-0160 are met. The provider must give the original agreement to the enrollee and file a copy in the enrollee's record.

(a) The agreement must state all of the following:

(i) The specific service to be provided;

(ii) That the service is not covered by either ((~~MAA~~)) the department or the MCO;

(iii) An explanation of why the service is not covered by the MCO or ((~~MAA~~)) the department, such as:

(A) The service is not medically necessary; or

(B) The service is covered only when provided by a participating provider.

(iv) The enrollee chooses to receive and pay for the service; and

(v) Why the enrollee is choosing to pay for the service, such as:

(A) The enrollee understands that the service is available at no cost from a provider participating with the MCO, but the enrollee chooses to pay for the service from a provider not participating with the MCO;

(B) The MCO has not authorized emergency department services for nonemergency medical conditions and the enrollee chooses to pay for the emergency department's services rather than wait to receive services at no cost in a participating provider's office; or

(C) The MCO or PCCM has determined that the service is not medically necessary and the enrollee chooses to pay for the service.

(b) For limited-English proficient enrollees, the agreement must be translated or interpreted into the enrollee's primary language to be valid and enforceable.

(c) The agreement is void and unenforceable, and the enrollee is under no obligation to pay the provider, if the service is covered by ((~~MAA~~)) the department or the MCO as described in subsection (1) of this section, even if the provider is not paid for the covered service because the provider did not satisfy the payor's billing requirements.

AMENDATORY SECTION (Amending WSR 03-18-110, filed 9/2/03, effective 10/3/03)

WAC 388-538-100 Managed care emergency services. (1) A managed care enrollee may obtain emergency services, for emergency medical conditions ((~~in~~)) from any ((~~hospital emergency department~~)) qualified Medicaid provider. ("Emergency services" and "emergency medical condition" are as defined in this chapter.)

(a) The managed care organization (MCO) covers emergency services for MCO enrollees.

(b) ((~~MAA~~)) The department covers emergency services for primary care case management (PCCM) enrollees.

(2) Emergency services for emergency medical conditions do not require prior authorization by the MCO, primary care provider (PCP), PCCM provider, or ((~~MAA~~)) the department.

(3) MCOs must cover all emergency services provided to an enrollee by a provider who is qualified to furnish Medicaid services, without regard to whether the provider is a participating or nonparticipating provider.

(4) An enrollee who requests emergency services is entitled to receive an exam to determine if the enrollee has an emergency medical condition. What constitutes an emergency medical condition may not be limited on the basis of diagnosis or symptoms.

(5) The MCO must cover emergency services provided to an enrollee when:

(a) The enrollee had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in the definition of an emergency medical condition; and

(b) The plan provider or other MCO representative instructs the enrollee to seek emergency services.

(6) In any disagreement between a hospital and the MCO about whether the enrollee is stable enough for discharge or transfer, or whether the medical benefits of an unstabilized transfer outweigh the risks, the judgment of the attending physician(s) actually caring for the enrollee at the treating facility prevails.

AMENDATORY SECTION (Amending WSR 03-18-110, filed 9/2/03, effective 10/3/03)

WAC 388-538-110 The grievance system for managed care organizations (MCO). (1) ((~~A managed care enrollee may be enrolled in a managed care organization (MCO) or with a primary care case management (PCCM) provider.~~)) This section contains information about the grievance system for managed care organization (MCO) enrollees, which includes grievances and appeals ((~~as defined in WAC 388-538-050~~)). See WAC 388-538-111 for information about the grievance system for PCCM enrollees, which includes grievances and appeals. ((~~See WAC 388-538-112 for the department's fair hearing process for appeals by MCO enrollees.~~))

(2) An MCO enrollee may voice a grievance or appeal an action by an MCO to the MCO either orally or in writing.

(3) ((~~If an MCO fails to meet the time frames in this section concerning any appeal, the MCO must provide the services that are the subject of the appeal.~~

~~(4)~~)) MCOs must maintain records of grievances and appeals and must review the information as part of the MCO's quality strategy.

(((~~(5)~~))) (4) MCOs must provide information describing the MCO's grievance system to all providers and subcontractors ((~~in any contract~~)).

(((~~(6)~~))) (5) Each MCO must have a grievance system in place for enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC)((~~, insofar as OIC regulations are not in conflict with this chapter. Where such~~)). If a conflict exists between the requirements of this chapter and OIC regulations, the requirements of this chapter take precedence. The MCO grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (((~~(7)~~))) (6) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (((~~(8)~~))) (7) of this section for the standard appeal process and subsection (((~~(9)~~))) (8) of this section for the expedited appeal process;

(c) Access to the department's ((~~fair~~)) hearing process for actions as defined in WAC 388-538-050. The department's ((~~fair~~)) hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the department's ((~~fair~~)) hearing process for MCO enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050 (see WAC 388-538-112 for additional information about the IR); and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050 (also see chapter 388-02 WAC and WAC 388-538-112).

(((~~(7)~~))) (6) The MCO grievance process:

(a) Only an enrollee may file a grievance with an MCO; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MCO enrollees are protected, ((~~MAA approves~~)) each MCO's grievance process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's grievance process, including how to use the department's ((~~fair~~)) hearing process. ((~~MAA~~)) The MCOs must ((~~approve~~)) have department approval for all written information the MCO sends to enrollees.

(d) The MCO must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MCO must acknowledge receipt of each grievance either orally or in writing, and each appeal in writing, within five working days.

(f) The MCO must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MCO must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(((~~(8)~~))) (7) The MCO appeal process:

(a) An MCO enrollee, or ((~~a provider acting on behalf of the enrollee and~~)) the enrollee's representative with the enrollee's written consent, may appeal an MCO action. ((~~A provider may not request a department fair hearing on behalf of an enrollee.~~))

(b) To ensure the rights of MCO enrollees are protected, ((~~MAA approves~~)) each MCO's appeal process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's appeal process and the department's ((~~fair~~)) hearing process. ((~~MAA~~)) The MCOs must ((~~approve~~)) have department approval for all written information the MCO sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MCO's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MCO mailing the notice of action. Otherwise, the time frames in subsection (((~~(8)~~))) (7)(d) of this section apply.

(f) The MCO's notice of action must:

(i) Be in writing;

(ii) Be in the enrollee's primary language and be easily understood as required in 42 C.F.R. 438.10 (c) and (d);

(iii) Explain the action the MCO or its contractor has taken or intends to take;

(iv) Explain the reasons for the action;

(v) Explain the enrollee's or the ((~~provider's~~)) enrollee's representative's right to file an MCO appeal;

(vi) Explain the procedures for exercising the enrollee's rights;

(vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (((~~(9)~~))) (8) of this section);

(viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (((~~(10)~~))) (9) of this section); and

(ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:

(A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.

(B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the enrollee or provider requests extension. If the request for extension is granted, the MCO must:

(I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 C.F.R. 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.

(D) For expedited authorization decisions, in cases where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.

(g) The MCO must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).

(h) The MCO must acknowledge receipt of each appeal.

(i) The MCO must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection ((~~(9)~~)) (8) for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MCO must inform the enrollee of the limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MCOs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MCO receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MCO receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MCO receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice (also see subsection ((~~(9)~~)) (8) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request a department ((~~fair~~)) hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection ((~~(10)~~)) (9) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MCO's action (also see subsection ((~~(11)~~)) (10) of this section).

(m) If an MCO enrollee does not agree with the MCO's resolution of the appeal, the enrollee may file a request for a department ((~~fair~~)) hearing within the following time frames (see WAC 388-538-112 for the ((~~MAA fair~~)) department's hearing process for MCO enrollees):

(i) For ((~~appeals~~)) hearing requests regarding a standard service, within ninety days of the date of the MCO's notice of the resolution of the appeal.

(ii) For ((~~appeals~~)) hearing requests regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MCO's notice of the resolution of the appeal.

(n) The MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to ((~~filing an appeal (a request for a department fair~~)) requesting a hearing) with ((~~MAA~~)) the department.

((~~(9)~~)) (8) The MCO expedited appeal process:

(a) Each MCO must establish and maintain an expedited appeal review process for appeals when the MCO determines (for a request from the enrollee) or the provider indicates (in making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) ((~~The MCO must make a decision on the enrollee's request for expedited appeal and provide notice, as expeditiously as the enrollee's health condition requires, within three calendar days after the MCO receives the appeal. The MCO must also make reasonable efforts to provide oral~~

~~notice~~)) When approving an expedited appeal, the MCO will issue a decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the appeal.

(c) The MCO must ensure that punitive action is ((~~neither~~)) not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the ((~~time frame~~)) timeframe for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two (((~~(2)~~))) calendar days with a written notice.

(((~~(10)~~))) (9) Continuation of previously authorized services:

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 C.F.R. 431.213 and 431.214 are met, within ten calendar days of the MCO mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MCO's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MCO continues or reinstates the enrollee's services while the appeal is pending, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MCO mails the notice of the resolution of the appeal and the enrollee has not requested a department ((~~fair~~)) hearing (with continuation of services until the department ((~~fair~~)) hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a ((~~fair~~)) hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC ((~~388-53-112~~)) 388-538-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MCO's action, the MCO may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(((~~(11)~~))) (10) Effect of reversed resolutions of appeals:

(a) If the MCO or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MCO or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

AMENDATORY SECTION (Amending WSR 03-18-110, filed 9/2/03, effective 10/3/03)

WAC 388-538-111 Primary care case management (PCCM) grievances and appeals. (1) ((~~A managed care enrollee may be enrolled in a managed care organization (MCO) or with a primary care case management (PCCM) provider.~~)) This section contains information about the grievance system for PCCM enrollees, which includes grievances and appeals. See WAC 388-538-110 for information about the grievance system for MCO enrollees((~~, which includes grievances and appeals. See WAC 388-538-112 for the fair hearing process for appeals by MCO enrollees~~)).

(2) A PCCM enrollee may voice a grievance or file an appeal ((~~an MAA action~~)), either orally or in writing. PCCM enrollees use the ((~~medical assistance administration's (MAA's)~~)) department's grievance and appeal processes.

(3) The grievance process for PCCM enrollees;

(a) A PCCM enrollee may file a grievance with ((~~MAA~~)) the department. A provider may not file a grievance on behalf of a PCCM enrollee.

(b) ((~~MAA~~)) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (7)(c).

(c) When a PCCM enrollee files a grievance with ((~~MAA~~)) the department, the enrollee is entitled to:

(i) Any reasonable assistance in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers);

(ii) Acknowledgment of ((~~MAA's~~)) the department's receipt of the grievance;

(iii) A review of the grievance. The review must be conducted by ((~~an MAA~~)) a department representative who was not involved in the grievance issue; and

(iv) Disposition of a grievance and notice to the affected parties within ninety days of ((~~MAA~~)) the department receiving the grievance.

(4) The appeal process for PCCM enrollees:

(a) A PCCM enrollee may file an appeal of ((~~an MAA~~)) a department action with ((~~MAA~~)) the department. A provider may not file an appeal on behalf of a PCCM enrollee.

(b) ((~~MAA~~)) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (8)(c).

(c) The appeal process for PCCM enrollees follows that described in chapter 388-02 WAC. Where a conflict exists, the requirements in this chapter take precedence.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-112 The department of social and health services' (DSHS) ((~~fair~~)) hearing process for enrollee appeals of managed care organization (MCO) actions. (1) The ((~~fair~~)) hearing process described in chapter 388-02 WAC applies to the ((~~fair~~)) hearing process described in this chapter. Where a conflict exists, the requirements in this chapter take precedence.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to ((~~filing an appeal (a request for~~)) requesting a ((~~department fair~~)) hearing((~~,~~)) with ((~~MAA~~)) the department. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department ((~~fair~~)) hearing within the following time frames:

(a) For ((~~appeals~~)) hearing requests regarding a standard service, within ninety calendar days of the date of the MCO's notice of the resolution of the appeal.

(b) For ((~~appeals~~)) hearing requests regarding termination, suspension, or reduction of a previously authorized service, ((~~or~~)) and the enrollee is requesting continuation of services, within ten calendar days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department ((~~fair~~)) hearing.

(5) Expedited hearing process:

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH indicates that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH gives prompt oral notice to the enrollee followed by written notice within two calendar days of request and transfer the hearing to the timeframe for a standard service.

(6) Parties to the ((~~fair~~)) hearing include the department, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

((~~(6)~~)) (7) If an enrollee disagrees with the ((~~fair~~)) hearing decision, then the enrollee may request an independent review (IR) in accordance with RCW 48.43.535.

((~~(7)~~)) (8) If there is disagreement with the IR decision, any party may request a review by the department's ((~~of social and health services (DSHS)~~)) board of appeals (BOA) within twenty-one days of the IR decision. The department's BOA issues the final administrative decision.

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-120 Enrollee request for a second medical opinion. (1) A **managed care** enrollee has the right to a timely referral for a second opinion upon request when:

(a) The enrollee needs more information about treatment recommended by the provider or managed care organization (MCO); or

(b) The enrollee believes the MCO is not authorizing medically necessary care.

(2) A managed care enrollee has a right to a second opinion from a participating provider. At the MCO's discretion, a clinically appropriate nonparticipating provider who is agreed upon by the MCO and the enrollee may provide the second opinion.

(3) Primary care case management (PCCM) ((~~provider~~)) enrollees have a right to a timely referral for a second opinion by another provider who has a core provider agreement with ((~~medical assistance administration (MAA)~~)) the department.

AMENDATORY SECTION (Amending WSR 03-18-111, filed 9/2/03, effective 10/3/03)

WAC 388-538-130 Exemptions and ending enrollment in managed care. (1) The ((~~medical assistance administration (MAA)~~)) department exempts a client from mandatory enrollment in managed care or ends an enrollee's enrollment in managed care (also referred to as disenrollment) as specified in this section. ((~~Only MAA has authority to exempt a client from enrollment in, or remove an enrollee from, managed care.~~))

(2) A client or enrollee, or the client's or enrollee's representative as defined in RCW 7.70.065, may request ((~~MAA~~)) the department to exempt or end enrollment in managed care as described in this section.

(a) If a client requests exemption prior to the enrollment effective date, the client is not enrolled until ((~~MAA~~)) the department approves or denies the request.

(b) If an enrollee requests to end enrollment, the enrollee remains enrolled pending ((~~MAA's~~)) the department's final decision, unless staying in managed care would adversely affect the enrollee's health status.

(c) The client or enrollee receives timely notice by telephone or in writing when ((~~MAA~~)) the department approves or denies the client's or enrollee's request. ((~~MAA~~)) The department follows a telephone denial by written notification. The written notice contains all of the following:

(i) The action ((~~MAA~~)) the department intends to take;

(ii) The reason(s) for the intended action;

(iii) The specific rule or regulation supporting the action;

(iv) The client's or enrollee's right to request a ((~~fair~~)) hearing; and

(v) A translation into the client's or enrollee's primary language when the client or enrollee has limited English proficiency.

(3) A managed care organization (MCO) or primary care case management (PCCM) provider may request ((~~MAA~~)) the department to end enrollment. The request must be in writing and be sufficient to satisfy ((~~MAA~~)) the department that the enrollee's behavior is inconsistent with the MCO's or PCCM provider's rules and regulations (e.g., intentional misconduct). ((~~MAA~~)) The department does not approve a request to remove an enrollee from managed care when the request is solely due to an adverse change in the enrollee's health or the cost of meeting the enrollee's health care needs. The MCO or PCCM provider's request must include documentation that:

(a) The provider furnished clinically appropriate evaluation(s) to determine whether there is a treatable problem contributing to the enrollee's behavior;

(b) Such evaluation either finds no treatable condition to be contributing, or after evaluation and treatment, the enrollee's behavior continues to prevent the provider from safely or prudently providing medical care to the enrollee; and

(c) The enrollee received written notice of the provider's intent to request the enrollee's removal, unless ((~~MAA~~)) the department has waived the requirement for provider notice because the enrollee's conduct presents the threat of imminent harm to others. The provider's notice must include:

(i) The enrollee's right to use the provider's grievance system as described in WAC 388-538-110 and 388-538-111; and

(ii) The enrollee's right to use the department's ((~~fair~~)) hearing process, after the enrollee has exhausted all grievance and appeals available through the provider's grievance system (see WAC 388-538-110 and 388-538-111 for provider grievance systems, and WAC 388-538-112 for the ((~~fair~~)) hearing process for enrollees).

(4) When ((~~MAA~~)) the department receives a request from an MCO or PCCM provider to remove an enrollee from enrollment in managed care, ((~~MAA~~)) the department attempts to contact the enrollee for the enrollee's perspective. If ((~~MAA~~)) the department approves the request, ((~~MAA~~)) the department sends a notice at least ten days in advance of the effective date that enrollment will end. The notice includes:

(a) The reason ((~~MAA~~)) the department approved ending enrollment; and

(b) Information about the enrollee's ((~~fair~~)) hearing rights.

(5) ((~~MAA~~)) The department will exempt a client from mandatory enrollment or end an enrollee's enrollment in managed care when any of the following apply:

(a) The client or enrollee is receiving foster care placement services from the division of children and family services (DCFS);

(b) The client has or the enrollee becomes eligible for Medicare, basic health (BH), CHAMPUS/TRICARE, or any other ((~~accessible~~)) third-party health care coverage comparable to the department's managed care coverage that would require exemption or ((~~involuntary disenrollment~~)) involuntarily ending enrollment from:

(i) An MCO, in accordance with ((~~MAA's healthy options (HO)~~)) the department's managed care contract; or

(ii) A primary care case management (PCCM) provider, ((~~in accordance with MAA's~~)) according to the department's PCCM contract.

(c) The enrollee is no longer eligible for managed care.

(6) ((~~MAA~~)) The department will grant a client's request for exemption or an enrollee's request to end enrollment when:

(a) The client or enrollee is American Indian/Alaska native (AI/AN) as specified in WAC 388-538-060(2);

(b) The client or enrollee has been identified by ((~~MAA~~)) the department as a child who meets the definition of "children with special health care needs";

(c) The client or enrollee is homeless or is expected to live in temporary housing for less than one hundred twenty days from the date of the request; or

(d) The client or enrollee speaks limited English or is hearing impaired and the client or enrollee can communicate with a provider who communicates in the client's or enrollee's language or in American sign language and is not available through the MCO and the MCO does not have a provider available who can communicate in the client's language and an interpreter is not available.

(7) On a case-by-case basis, ((~~MAA~~)) the department may grant a client's request for exemption or an enrollee's request to end enrollment when, in ((~~MAA's~~)) the department's judgment, the client or enrollee has a documented and verifiable medical condition, and enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(8) Upon request, ((~~MAA~~)) the department may exempt the client or end enrollment for the period of time the circumstances or conditions that lead to exemption or ending enrollment are expected to exist. ((~~MAA~~)) The department may periodically review those circumstances or conditions to determine if they continue to exist. If ((~~MAA~~)) the department approves the request for a limited time, the client or enrollee is notified in writing or by telephone of the time limitation, the process for renewing the exemption or the ending of enrollment.

(9) An MCO may refer enrollees to ((~~MAA's~~)) the department's patients requiring regulation (PRR) program ((~~in accordance with~~)) according to WAC 388-501-0135.

AMENDATORY SECTION (Amending WSR 03-18-111, filed 9/2/03, effective 10/3/03)

WAC 388-538-140 Quality of care. (1) ((~~In order~~)) To assure that managed care enrollees receive quality health care services, the ((~~medical assistance administration (MAA)~~)) department requires managed care organizations (MCOs) to comply with quality improvement standards ((~~as stated~~)) detailed in the ((~~medical assistance administration (MAA)~~)) the department's managed care contract ((~~as follows~~)). MCO's must:

(a) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(b) Have effective means to detect ((~~both underutilization and overutilization~~)) over and under utilization of services;

(c) ((~~Maintain a grievance system that includes a process for enrollees to file grievances and appeals according to the requirements of WAC 388-538-110;~~

~~(d)~~)) Maintain a system for provider and practitioner credentialing and recredentialing;

(((~~(e)~~))) (d) Ensure that MCO subcontracts and the delegation of MCO responsibilities are in accordance with ((~~MAA~~)) the department standards and regulations;

(((~~(f)~~))) (e) Ensure MCO oversight of delegated entities responsible for any delegated activity to include:

(i) A delegation agreement with each entity describing the responsibilities of the MCO and the entity;

(ii) Evaluation of the entity prior to delegation;

(iii) An annual evaluation of the entity; and

(iv) Evaluation or regular reports and follow-up on issues out of compliance with the delegation agreement or the department's managed care contract specifications.

(f) Cooperate with((~~an MAA-contracted~~)) a department-contracted, qualified independent external review organization (EQRO) conducting review activities as described in 42 C.F.R. 438.358;

(g) Have an effective ((~~means~~)) mechanism to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(h) Assess and develop individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and non-clinical disciplines and services in the overall plan of care;

(i) Submit annual reports to ((~~MAA, including HEDIS performance measures,~~)) the department on performance measures as specified by ((~~MAA~~)) the department;

(((~~(i)~~))) (j) Maintain a health information system that:

(i) Collects, analyzes, integrates, and reports data as requested by ((~~MAA~~)) the department;

(ii) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of Medicaid eligibility, and other areas as defined by ((~~MAA~~)) the department;

(iii) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by ((~~MAA~~)) the department; and

(iv) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.

(((~~(j)~~))) (k) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(i) Measuring performance using objective quality indicators;

(ii) Implementing system changes to achieve improvement in service quality;

(iii) Evaluating the effectiveness of system changes;

(iv) Planning and initiating activities for increasing or sustaining performance improvement;

(v) Reporting each project status and the results as requested by ((~~MAA~~)) the department; and

(vi) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year.

(((~~(k)~~))) (l) Ensure enrollee access to health care services;

(((~~(l)~~))) (m) Ensure continuity and coordination of enrollee care; and

(((~~(m) Ensure the protection of enrollee rights and the confidentiality of enrollee health information~~)) (n) Maintain and monitor availability of health care services for enrollees.

(2) ((~~MAA~~)) The department may:

(i) Impose intermediate sanctions in accordance with 42 C.F.R. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits;

(ii) Require corrective action for findings for noncompliance with any contractual state or federal requirements; and

(iii) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected.

WSR 05-23-029
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 8, 2005, 1:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-16-079.

Title of Rule and Other Identifying Information: The department is adding new and amending sections within chapter 388-106 WAC, Long term care services; amending and repealing sections within chapter 388-71 WAC, Home and community services and programs; and amending sections within chapter 388-110 WAC, Contracted residential care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on January 10, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 11, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. January 10, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 6, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

Summary of Significant WAC Changes

Chapter 388-106 WAC Changes

Affected WAC	Change
388-106-0010	Changed the following definitions: • Ability to make self understood • Activities of daily living, bed mobility • Assistance available • Assistance with medication management • Categorically needy • Decision making • Estate recovery • Informal support • Institution • Self performance for ADLs • Self performance for IADLs • SSI-related • Support provided
388-106-0015	Updated WAC reference.
388-106-0035	Clarified language on whether services are covered when client is out of state.
388-106-0050	Clarified when assessments occur and when an in-person assessment is not required.
388-106-0065	Removed examples of who can be present during an assessment.
388-106-0130	Added information about deduction for meal preparation, ordinary housework, and essential shopping. Included private duty nursing as a service that personal care hours can be used for.
388-106-0213	Updated age guidelines for children receiving MPC.
388-106-0215 (new)	Included WAC on when MPC services start.
388-106-0200, 388-106-0300, 388-106-0305, 388-106-0400, and 388-106-0500	Included criteria for how nursing services are authorized.
388-106-0705 and 388-106-0715	Removed the provisions to deem eligibility. Clarified eligibility language regarding prepaid benefits.
388-106-1303 (new)	Proposed new rules on client responsibilities.
388-71-0540, 388-71-0546, 388-71-0551, 388-71-0556, and 388-71-05695	Included references to managed care entities, who will also be responsible for ensuring that individual providers are qualified and trained.
388-71-0704	Included language on what services the adult day care center must provide onsite.
388-71-0706	Included language on what services the adult day health center must provide onsite.
388-71-0210 through 388-71-0260	Repeal.

Chapter 388-100 WAC Changes

388-110-020	Updated definitions to include links to new chapter 388-106 WAC.
388-110-100	Revised the maximum number of days required for approval of social leave to eighteen days per calendar year and clarified language regarding Medicaid resident.
388-110-220	Updated definitions to include links to new chapter 388-106 WAC. Added dementia training topics. Changed definition of eating.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.010, and 74.39A.020.

Statute Being Implemented: Chapters 74.09, 74.39, and 74.39A RCW.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brooke Buckingham, P.O. Box 45600, Olympia, WA 98504, (360) 725-3213.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brooke Buckingham, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-3213, fax (360) 438-8633, e-mail buckibe@dshs.wa.gov.

November 4, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-24 issue of the Register.

WSR 05-23-039
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed November 9, 2005, 1:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-077.

Title of Rule and Other Identifying Information: WAC 390-05-400 relating to changes in the I-134 dollar amounts subject to inflationary adjustment under RCW 42.17.690 and WAC 390-12-010 relating to the regular meetings of the Public Disclosure Commission.

Hearing Location(s): Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 26, 2006, at 9:00 a.m.

Date of Intended Adoption: January 26, 2006.

Submit Written Comments to: Doug Ellis, Assistant Director, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail dellis@pdc.wa.gov, fax (206) 753-1112, by January 23, 2006.

Assistance for Persons with Disabilities: Contact Chip Beatty by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adjust the I-134 dollar amounts based on changes in economic conditions as reflected in the inflationary index used by the commission (WAC 390-05-400) and to adjust the Public Disclosure Commission regular meeting schedule to accommodate commissioner scheduling conflicts (WAC 390-12-010).

Reasons Supporting Proposal: To comply with RCW 42.17.690 providing inflationary adjustments to the I-134 dollar amounts and to accommodate commissioner scheduling conflicts.

Statutory Authority for Adoption: RCW 42.17.370 and 42.17.690.

Statute Being Implemented: RCW 42.17.690 and 42.30.075.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendments are needed to implement RCW 42.17.690 and to comply with RCW 42.30.075.

Name of Proponent: Public Disclosure Commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Public Disclosure Commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 applicable to this rule adoption.

October 31, 2005
Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 03-22-064, filed 11/4/03, effective 1/1/04)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	((~~2004~~)) 2006 Revision
.020	Definition of "Independent Expenditure"	$((~~625~~)) 675	$((~~675~~)) 700
.125	Reimbursement of candidate for loan to own campaign	$((~~3,800~~)) 4,000	$((~~4,000~~)) 4,300
.180(1)	Report—		
	Applicability of provisions to		
	Persons who made contributions	$((~~12,500~~)) 13,500	$((~~13,500~~)) 14,500
	Persons who made independent expenditures	$((~~625~~)) 675	$((~~675~~)) 700
.640(1)	Contribution Limits—		
	Candidates for state leg. office	$((~~625~~)) 700	((~~$675~~))
	Candidates for other state office	$((~~1,250~~)) 1,400	((~~$1,350~~))
.640(2)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
	State Legislative Office	$((~~625~~)) 700	((~~$675~~))
	Other State Office	$((~~1,250~~)) 1,400	((~~$1,350~~))

Code Section	Subject Matter	Amount Enacted or Last Revised	((2004)) 2006 Revision
.640(3)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
	State parties and caucus committees	((.64)) .70 per voter	((.68 per voter))
	County and leg. district parties	((.32)) .35 per voter	((.34 per voter))
	Limit for all county and leg. district parties to a candidate	((.32)) .35 per voter	((.34 per voter))
.640(4)	Contribution Limits—		
	Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	((.64)) .70 per voter	((.68 per voter))
	County and leg. district parties	((.32)) .35 per voter	((.34 per voter))
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	((.32)) .35 per voter	((.34 per voter))
.640 (6)	Limits on contributions to political parties and caucus committees		
	To caucus committee	$((625)) 700	(($675))
	To political party	$((3,200)) 3,500	(($3,400))
.740	Contribution must be made by written instrument	$((60)) 65	$((65)) 70

AMENDATORY SECTION (Amending WSR 04-12-053, filed 5/28/04, effective 6/28/04)

WAC 390-12-010 Public disclosure commission—Regular meetings. Pursuant to RCW 42.30.075, regular meetings of the public disclosure commission are scheduled to be held on the fourth ((Tuesday)) Thursday of each month at 9:00 a.m. unless a different time is noted on an agenda, except November and December when a combined meeting is scheduled to be held during the first or second week of December. The meetings shall be held in the commission meeting room, second floor, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, unless circumstances require relocating to another site. If relocating is required, the meeting shall be held at a place designated by the executive director of the commission.

WSR 05-23-056
WITHDRAWAL OF PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed November 10, 2005, 9:58 a.m.]

Withdrawal of Amendment to
Regulation I, Section 3.07 (Compliance Tests)

This is notification that we are withdrawing WSR 05-22-106 that was filed on November 2, 2005. At this time it is our intention to refile in February 2006.

If you have any questions, please call David S. Kircher at (206) 689-4050 or e-mail to davek@pscleanair.org.

David S. Kircher, Manager
Air Resources Department

WSR 05-23-067
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed November 15, 2005, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-149.

Title of Rule and Other Identifying Information: Chapter 468-66 WAC, Highway Advertising Control Act.

Hearing Location(s): Large Commission Board Room, Washington State Department of Transportation, 310 Maple Park Avenue S.E., Olympia, WA 98504, on January 3, 2006, at 9:00 a.m.

Date of Intended Adoption: January 3, 2006.

Submit Written Comments to: Pat O'Leary, Washington State Department of Transportation, P.O. Box 47344, e-mail olearyp@wsdot.wa.gov, fax (360) 705-6826, by December 27, 2005.

Assistance for Persons with Disabilities: Contact Pat O'Leary by December 27, 2005, TTY (800) 833-6388 or (360) 705-7296.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This chapter is being revised to add fundamental definitions, revise fee schedule, and facilitate ease of understanding.

Reasons Supporting Proposal: To facilitate effective and efficient program operations for the Department of Transportation in duties to uphold and enforce chapter 47.42 RCW, the Scenic Vistas Act.

Statutory Authority for Adoption: Chapters 34.04 [34.05] and 47.42 RCW.

Rule is necessary because of federal law, C.F.R. Part 750.

Name of Proponent: Washington State Department of Transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pat O'Leary, Olympia, Washington, (360) 705-7296.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC chapter is a negotiated rule making. The industry being regulated by the existing and revised rules as proposed participated in extensive review process.

A cost-benefit analysis is not required under RCW 34.05.328. This WAC chapter is a negotiated rule making. The industry being regulated by the existing and revised rules as proposed participated in extensive review process.

November 14, 2005
John F. Conrad
Assistant Secretary
of Transportation

AMENDATORY SECTION (Amending Order 170, filed 8/7/97, effective 9/7/97)

WAC 468-66-010 Definitions. The following terms when used in this chapter shall have the following meanings:

(1) "Abandoned((~~,~~))" means a sign for which neither sign owner nor land owner claim any responsibility.

(2) "Act" ((~~shall~~)) means the Highway Advertising Act of 1961, as amended and embodied in chapter 47.42 RCW.

(3) "Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

(4) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code((~~,~~)); or, if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial and/or industrial activities within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which such activities are located. Measurements shall be along or parallel to the edge of the main-traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence. Residences are buildings used as homes, located in areas where individuals and families typically reside. Residence buildings no longer used as homes may be considered commercial or industrial activities, if used for commercial or industrial purposes and located in areas having either mixed or primarily commercial and industrial development.

((~~Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of six continuous months, any signs located within the former unzoned area shall become nonconforming and shall not be maintained by any person after May 10, 1974.~~)) If any commercial or industrial activity that has been used in defining or delineating an unzoned commercial or industrial area ceases to operate for a period of six continuous months resulting in fewer than three commercial or industrial activities remaining within that area, the unzoned area is deemed to no longer exist. Any signs located within the former unzoned area are declared nonconforming.

(5) ((~~"Commission" means the Washington state transportation commission.~~)) "Department" means the Washington state department of transportation.

(6) "Destroyed" means a nonconforming sign shall be considered destroyed if more than fifty percent of the sign structure components are dislocated or damaged to the extent that the sign face has fallen to the ground.

(7) "Discontinued((~~,~~))" means a sign shall be considered discontinued if, after receiving notice from the department of absence of advertising content for ((~~three months~~)) ninety days, the permit holder fails to put advertising content on the sign within ((~~three months~~)) ninety days of the notice. The department may extend the ninety-day compliance time to a maximum of one year, if the sign owner provides documentation of unique circumstances creating involuntary discontinuance and preventing the sign owner from placing advertising content on the sign.

((~~(7)~~)) (8) "Electronic sign" means an on-premise advertising sign having a signboard display that can be changed by an electrical, electronic, or computerized process.

(9) "Entrance roadway" means any public road or turning roadway including acceleration lanes, by which traffic may enter the main-traveled way of a ((~~controlled~~)) limited access highway from the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

((~~(8)~~)) (10) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

((~~(9)~~)) (11) "Exit roadway" means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of a ((~~controlled~~)) lim-

ited access highway to reach the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(((~~(10)~~))) (12) "Interstate system" means any state highway ((~~which~~)) that is or ((~~does~~)) becomes part of the national system of interstate and defense highways as described in section 103(e) of Title 23, United States Code.

(((~~(11)~~))) (13) "Legible" means capable of being read without visual aid by a person of normal visual acuity.

(((~~(12)~~))) (14) "Limited access highway" means a state highway, or a portion of a state highway, along which the department has acquired access rights as provided by chapter 47.52 RCW. A state highway, or a portion of a state highway, along which the department has not acquired access rights as provided by chapter 47.52 RCW is termed herein as a "nonlimited access highway."

(15) "Maintain" means to allow to exist. ((~~A sign loses its right to remain as a nonconforming sign if its size is increased more than fifteen percent over its size on the effective date of the Scenic Vistas Act on May 10, 1971, or the effective date of control of a given route, whichever is applicable. The sign may continue as long as it is not destroyed, abandoned, or discontinued. Such signs may be reerected in kind if destroyed due to vandalism, and other criminal or tortious acts.~~

~~(13)~~))) (16) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, entrance roadways, exit roadways, or parking areas.

(((~~(14)~~))) (17) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(18) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual, or individuals.

(((~~(15)~~))) (19) "Primary system" means any state highway which is part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code, in existence on June 1, 1991, as enacted in the 1991 Intermodal Surface Transportation Efficiency Act, and any highway which is not on such system but which is on the National Highway System.

(((~~(16)~~))) (20) "Public service information" means a message on an electronic sign that provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(21) "Scenic system" means:

(a) Any state highway within any public park, federal forest area, public beach, public recreation area, or national monument;

(b) Any state highway or portion thereof outside the boundaries of any incorporated city or town designated in RCW 47.42.140 by the legislature as a part of the scenic system; or

(c) Any national scenic byway((~~, state scenic byway,~~)) or state highway or portion thereof, outside the boundaries of any incorporated city or town, designated by the legislature in chapter 47.39 RCW as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway as determined by the department.

(((~~(17)~~))) (22) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. The term includes the sign face(s), and the sign structure unless the sign is painted on a building, and applies to portable, temporary, and permanent installations. Signs are further defined by the provisions following:

(((~~(18)~~))) (a) A single-faced sign may display only one advertised business activity or other activity that may be of interest to motorists.

(b) A double-faced (flanking or side-by-side) sign may only be patterned so that not more than two single-faced signs on one sign structure are visible to traffic approaching from one direction of travel.

(c) A V-type and back-to-back sign displays messages to opposing directions of travel from one sign structure. A V-type and back-to-back sign may only be patterned so that not more than one single-faced sign or double-faced (flanking or side-by-side) sign is visible to traffic approaching from each of the opposing directions of travel.

(d) A nonconforming sign means a sign that was lawfully erected but does not comply with provisions of state law or state regulations passed at a later date, or later fail to comply with the state law or state regulations due to changed conditions.

(e) Illegal signs are those erected or maintained in violation of state law or local law or ordinance.

(f) Pursuant to RCW 47.42.020(8) and 47.36.030(3), the term "sign" does not include signs, banners, or decorations that are devoid of commercial advertising and installed over a state highway to promote a local agency sponsored event.

(23) "Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(((~~(19)~~))) (24) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(((~~(20)~~))) (25) "Tri-vision sign" means a sign having a series of three-sided rotating slats arranged side by side, either horizontally or vertically, which are rotated by an electric-mechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.

(26) "Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

(((~~(21)~~))) (27) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(((22) "Electronic sign" means an outdoor advertising sign, display, or device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities (WAC 468-66-070).

(23) "Public service information" means a message on an electronic sign which provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(24) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products.

(25) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(26) "State scenic byway" means any scenic and recreational highway established by chapter 47.39 RCW.

(27) "Visible development" means those areas determined by the department to have development, both in type and location, that meet the requirements for unzoned commercial and industrial areas prescribed by RCW 47.42.020(9) and such development is not visually obstructed by vegetation or other natural features. It is prohibited to remove vegetation or other natural features, located within the state highway right of way, that may act as visual obstructions.))

(28) ((Tri-vision sign" means a sign having a series of three-sided rotating slats arranged side by side, either horizontally or vertically, which are rotated by an electric-mechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.)) "Visible development area" means a five hundred-foot area along a scenic system state highway, that is zoned for predominantly commercial or industrial uses by the governing county, having three or more commercial or industrial activities within the five hundred-foot area that are visible to traffic in both directions. The consideration of commercial or industrial activities, and measurements that establish the area shall conform with RCW 47.42.020(9).

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-66-020 Restrictions on signs. (1) Except as permitted by the act and these regulations, no person shall erect or maintain a sign which is visible from the main-traveled way of the interstate system, the primary system, or the scenic system. Signs visible to other types of state highways are not restricted by the Scenic Vistas Act or these regulations, but are subject to local ordinances.

(2) In case a highway or a section of highway is ((both)) a part of both the primary system and the scenic system, only those signs permitted along the scenic system ((shall)) may be erected or maintained.

AMENDATORY SECTION (Amending Order 195, filed 11/30/99, effective 12/31/99)

WAC 468-66-030 General provisions. (1) Notwithstanding any other provision of the act or these regulations, no signs visible from the main-traveled way of the interstate system, primary system, or scenic system which have any of the following characteristics shall be erected or maintained:

(((1))) (a) Signs advertising activities that are illegal under state or federal laws or regulations in effect at the location of such signs or at the location of such activities.

(((2))) (b) Illegal, destroyed, abandoned, or discontinued ((or obsolete)) signs.

(((3))) (c) Signs that are not clean and in good repair.

(((4))) (d) Signs that are not securely affixed to a substantial structure.

(((5))) (e) Signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal or device.

(((6))) (f) Signs which prevent the driver of a vehicle from having a clear and unobstructed view of ((official signs and)) at-grade intersections, approaching or merging traffic, official traffic control signs, or other traffic control devices.

(((7))) (g)(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, (((,))except ((those signs giving)) public service information((,))) signs, Type 3 on-premise signs along a primary system highway within an incorporated city or town or commercial or industrial area, or electronic on-premise signs operating in compliance with WAC 468-66-050.

(((8))) (ii) Signs which have lights that change intensity or color, lasers, strobe lights, or other lights with stroboscopic effect.

(h) Signs which use any lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(((9))) (i) Signs which move or have any animated or moving parts, (((,))except revolving ((signs giving)) public service information((,))) signs, Type 3 on-premise signs along a primary system highway within an incorporated city or town or commercial or industrial area, or tri-vision signs operating in compliance with WAC 468-66-030(2).

(((10))) (j) Signs which are erected or maintained upon trees, power poles or painted or drawn upon rocks or other natural features.

(((11) Signs which exceed twenty feet in length, width or height, or one hundred fifty square feet in area, including border and trim but excluding supports, except:

(a) Larger signs as permitted within commercial and industrial areas adjacent to the primary system pursuant to RCW 47.42.062; and

(b) Type 3 signs not more than fifty feet from the advertised activity; and

(c) Single on-premise signs advertising shopping centers, malls, and business combinations as described in WAC 468-66-070(3); and

(d) Type 8 signs shall not exceed thirty-two square feet in area, unless they qualify as Type 3 (on-premise) signs.

(12) Electronic signs may be used only to advertise activities conducted or goods and services available on the

~~property on which the signs are located or to present public service information.~~

~~(a) Advertising messages may contain words, phrases, sentences, symbols, trade-marks, and logos. A single message or a segment of a message must have a display time of at least two seconds including the time to move onto the sign board, with all segments of the total message to be displayed within ten seconds. A message consisting of only one segment may remain on the sign board as long as desired.~~

~~(b) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.~~

~~(c) Displays traveling horizontally across the sign board must move between sixteen and thirty-two light columns per second. Displays can scroll onto the sign board but must hold for two seconds including scrolling.~~

~~(d) Sign displays shall not include any art animations or graphics that portray motion, except for movement of graphics onto or off of the sign board as previously described.~~

~~(e) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. Signs found to be too bright shall be adjusted in accordance with the instructions of the department.~~

~~(f) As on-premise signs, electronic signs are subject to the provisions of RCW 47.42.045 and 47.42.062.~~

~~(13)~~)) (2) Tri-vision signs may be used as Type 3, Type 4, or Type 5 signs, with the provisions following ((~~provisions~~)):

(a) Visible to Interstate highways, tri-vision signs may only be used as Type 3 signs.

(b) Rotation of one sign face to another sign face is no more frequent than every eight seconds and the actual rotation process shall be accomplished in four seconds or less.

(c) Tri-vision signs shall contain a default mechanism that will stop the sign in one position should a malfunction occur.

(d) Maximum size limitations shall independently apply to each sign face, including framework and border.

(e) Tri-vision signs are subject to all other applicable provisions of chapter 47.42 RCW and chapter 468-66 WAC.

AMENDATORY SECTION (Amending Order 195, filed 11/30/99, effective 12/31/99)

WAC 468-66-050 Sign classifications ((~~of signs~~)) and specific provisions. Signs shall be classified ((~~as follows~~)) and restricted to the provisions following:

(1) Type 1—Directional or other official signs ((~~or~~)) and notices. Directional or other official signs and notices may be erected and maintained on private property or public property, other than state highway right of way, for the purposes of carrying out an official duty or responsibility. The signs may only be installed by public offices or public agencies within their territorial or zoning jurisdiction and shall follow federal, state, or local law.

(((~~(a) Signs and notices erected and maintained by public offices or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.~~

~~(b) Service club and religious notices, whose message shall contain only the name of a nonprofit service club or religious organization, its address and the time of its meeting or service.~~)) (a) Type 1(a) - Directional sign. A directional sign may only be installed in accordance with the provisions following:

(i) Publicly or privately owned places - Directional signs for publicly or privately owned places that feature natural phenomena; historical, cultural, scientific, or educational opportunities; areas of scenic beauty, or outdoor recreation areas:

• Publicly owned places - Directional signs for public places owned or operated by federal, state, or local government, or their agencies;

• Privately owned places - Directional signs for nonprofit privately owned places that feature scenic attractions. The attractions must be nationally or regionally known, or of outstanding interest to travelers.

(ii) A sign message shall be limited to identification of the activity or attraction and directional information. Directional information is limited to that which helps the motorist locate the activity, such as providing mileage to the activity, highway route or exit numbers.

(iii) Descriptive words, phrases, and photographic or pictorial representations of the activity or attraction are prohibited.

(iv) Type 1(a) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(v) The department must approve the proposed installation location.

(vi) Along the interstate system and other limited access highways having grade separations (interchanges), a sign shall not be located within two thousand feet of an interchange or rest area, measured from the ramp physical gore, or within two thousand feet of a parkland or scenic area.

(vii) Type 1(a) signs shall not be spaced closer than one mile apart.

(viii) Visible to a state route approaching an activity or attraction, a maximum of three signs per direction of travel are allowed for each activity or attraction.

(ix) Type 1(a) signs located along the interstate system shall be within seventy-five air miles of the activity or attraction.

(x) Type 1(a) signs located along the primary and scenic systems shall be within fifty air miles of the activity or attraction.

(b) Type 1(b) - Official sign. An official sign may be installed subject to the provisions following:

(i) Type 1(b) signs may only be erected and maintained by public offices or public agencies.

(ii) Type 1(b) signs may only be located within the governing jurisdiction of the public office or public agency.

(iii) Type 1(b) signs shall follow federal, state, or local law.

(iv) Type 1(b) signs have no restrictions on message content, provided the activity being described furthers an official duty or responsibility.

(v) Type 1(b) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(vi) Type 1(b) signs may be historical markers authorized by federal, state, and local law.

(vii) Type 1(b) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(c) Type 1(c) - Service activity sign. A service activity sign may be installed subject to the provisions following:

(i) Type 1(c) signs shall contain only the name of a nonprofit organization, its address, and the time of its meeting or service.

(ii) Type 1(c) signs shall not exceed eight square feet in area.

(iii) Type 1(c) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(2) Type 2—For sale or lease sign. A Type 2 sign ((~~not prohibited by state law which is consistent with the applicable provisions of these regulations and which~~)) may only advertise((~~s~~)) the sale or lease of the parcel of real property upon which the sign is located. The name of the owner of the property offered for sale or lease, or the owner's agent and phone number shall not be displayed more conspicuously than the words "for sale" or "for lease." No other message may be displayed on the sign. ((~~Not more than one such sign advertising the sale or lease of a parcel of property shall be visible to traffic proceeding in any one direction on an interstate system, primary system or scenic system highway.~~))

(a) Type 2 signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(b) Not more than one Type 2 sign may be installed that is visible to traffic proceeding in any one direction on an interstate, primary, or scenic system highway.

(c) The act does not regulate Type 2 signs with regard to zoning requirements or spacing.

(3) Type 3—On-premise signs.

(((~~(a) A sign advertising an activity conducted on the property on which the sign is located. The sign, except as provided under (b) of this subsection, shall be limited to identifying the establishment or the principal or accessory products or services offered on the property. A sign consisting principally of a brand name, trade name, product, or service incidental to the principal products or services offered on the property, or bringing rental income to the property owner, is not considered an on-premise sign. Not more than one such sign, visible to traffic proceeding in any one direction on an interstate system, primary system, or scenic system highway may be permitted more than fifty feet from the advertised activity.~~

~~(b) Temporary political campaign signs are a Type 3 on-premise sign, on which the property owner expresses endorsement of a political candidate or ballot issue, with the following restrictions:~~

~~(i) Temporary political campaign signs are limited to a maximum size of thirty-two square feet in area.~~

~~(ii) Temporary political campaign signs must be removed within ten days after the election.~~

~~(iii) Except as provided in (b)(i) and (ii) of this subsection, temporary political campaign signs are subject to all other applicable provisions of chapter 47.42 RCW and chapter 468-66 WAC that pertain to Type 3 on-premise signs.~~

~~(c) Signs reading "future site of" or similar wording will be allowed as an on-premise sign without any activity being apparent on the site for one year from date of installation provided the following conditions have been met:~~

~~(i) The department of transportation has received a letter of notification of intent from the owner of the proposed advertised activity.~~

~~(ii) The sign shall not inform of activities conducted elsewhere.~~

~~(iii) The maximum size of a future site sign shall not be greater than one hundred fifty square feet.~~

~~The sign must be removed at the end of the one year time period if the advertised activity has not become operational.~~

~~(4) Type 4 - Signs within twelve air miles of advertised activities. Signs not prohibited by state law which are consistent with the applicable provisions of these regulations and which advertise activities conducted within twelve air miles of such signs.~~

~~(5) Type 5 - Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by state law which are consistent with these regulations and which are designed to give information in the specific interest of the traveling public.~~)) (a) Type 3(a) - On-premise sign. A Type 3(a) on-premise sign may only advertise an activity conducted on the property upon which the sign is located.

(i) A Type 3(a) on-premise sign shall be limited to advertising the business or the owner, or the products or services offered on the property. A sign consisting mainly of a brand name, trade name, product or service incidental to the main products or services offered on the property, or a sign bringing rental income to the property, is not an on-premise sign.

(ii) A Type 3(a) on-premise sign more than fifty feet from the advertised activity may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports. The act does not regulate the size of Type 3(a) on-premise signs located within fifty feet of the advertised activity.

(iii) A Type 3(a) on-premise sign located at a shopping center, mall, or business combination is not authorized more than fifty feet from the individual activity it advertises, unless it is installed together with a Type (3)(b) business complex on-premise sign as described in (b)(i) of this subsection.

(iv) For the purpose of measuring from the advertised activity, the distance shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(b) Type 3(b) - Business complex on-premise sign. A Type 3(b) business complex on-premise sign may display the name of a shopping center, mall, or business combination.

(i) Where a business complex erects a Type 3(b) on-premise sign, the sign structure may display additional individual business signs identifying each of the businesses conducted on the premises. A Type 3(b) on-premise sign structure may also have attached a display area, such as a manually changeable copy panel, reader board, or electronically changeable message center, for advertising on-premise activities and/or presenting public service information.

(ii) Type 3(b) on-premise signs are not regulated by the act with regard to size. Any Type 3(a) on-premise sign and any display area, installed together with a Type 3(b) on-premise sign, may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim.

(c) Type 3(c) - Future site on-premise sign. A Type 3(c) future site on-premise sign may only display the name of a business activity, or other activity of interest to motorists, planned for the property upon which the sign is located and the anticipated opening date of such activity.

(i) The owner, or owner's representative, shall by letter notify the department at least thirty days prior to the installation of the proposed Type 3(c) future site on-premise sign. Said notice shall include the location, sign message, and installation date.

(ii) Type 3(c) future site on-premise signs may remain until the business activity is operational, but shall not exceed one year from the planned installation date. The sign must be removed at the end of one year after the planned installation date if the business activity is not yet operational.

(iii) Type 3(c) future site on-premise signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area.

(d) Type 3(d) - Temporary political campaign sign. A Type 3(d) temporary political campaign sign may express a property owner's endorsement of a political candidate or ballot issue.

(i) Type 3(d) temporary political campaign signs are limited to a maximum size of thirty-two square feet.

(ii) Type 3(d) temporary political campaign signs must be removed within ten days after an election. After primary elections, temporary political campaign signs endorsing a successful candidate may remain up to ten days after the succeeding general election.

(e) Not more than one Type 3(a) or 3(b) sign, visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway, may be permitted more than fifty feet from the advertised activity. Not more than one Type 3(c) sign may be installed visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway. The act does not regulate Type 3(d) signs with regard to the number of signs installed, visibility from highways, zoning requirements, or spacing.

(i) For Type 3(a) on-premise signs, the fifty-foot distance from the advertised activity shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(ii) For Type 3(b) on-premise signs, the fifty-foot distance from the advertised activity may be measured in the same manner as for Type 3(a) on-premise signs, or may be measured fifty feet from the nearest portion of a combined parking area.

(f) A Type 3(a) or 3(b) on-premise sign more than fifty feet from the advertised activity shall not be erected or maintained at a greater distance from the advertised activity than one of the options following, as applicable, selected by the owner of the business being advertised:

(i) One hundred fifty feet measured along the edge of the protected highway from the nearest edge of the main entrance to the activity advertised;

(ii) One hundred fifty feet from any outside wall of the main building of the advertised activity; or

(iii) Fifty feet from any outside edge of a regularly used parking lot maintained by, and contiguous to, the advertised activity.

(g) Electronic signs may be used only as Type 3 on-premise signs and/or to present public service information, as follows:

(i) Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the signboard with no duration limit.

(ii) Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll.

(iii) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

(iv) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(v) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.

(h) The act does not regulate Type 3(a), 3(b), 3(c), and 3(d) on-premise signs located along primary system highways inside an incorporated city or town or a commercial or industrial area.

(4) Type 4—Off-premise signs; and

(5) Type 5—Off-premise signs. Type 4 off-premise signs are distinguishable from Type 5 off-premise signs only by message content. Type 4 off-premise sign messages are those that do not qualify as Type 5 sign messages described in (b) of this subsection.

(a) A Type 4 sign shall be located within twelve air miles of the advertised activity. A Type 4 sign that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than twelve air miles from such sign shall not be permitted unless the name of the advertised activity, which is within twelve air miles of such sign, is displayed as conspicuously as such trade name.

(b) A Type 5 sign displays a message of specific interest to the traveling public. On Type 5 signs, only information about public places operated by federal, state, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or outdoor recreation, and places for lodging, camping, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. A trade name is authorized on a Type 5 sign only if it identifies or represents a place of specific interest to the traveling public; or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such place. The display of any other trade name is not permitted on Type 5 signs.

(c) Type 4 and Type 5 signs are restricted in size to the following:

(i) Visible to interstate highways, signs may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area including border and trim but excluding supports.

(ii) Visible to primary highways, the maximum area for any one sign, except as provided in (c)(iii) of this subsection, shall be six hundred seventy-two square feet with a twenty-five-foot maximum height and a fifty-foot maximum length, including the border and trim but excluding the base or apron, supports, and structural members. Cut-outs and extensions may add up to twenty percent of additional sign area.

(iii) Each sign face of a double-faced (flanking and side-by-side) sign may not exceed three hundred twenty-five square feet.

(d) The spacing of Type 4 and Type 5 signs along interstate highways and visible to traffic traveling in one direction shall be restricted as follows:

(i) Type 4 and Type 5 signs visible to traffic approaching an intersection of the main-traveled way of an interstate highway and an exit roadway may not exceed the number following:

Distance from intersection	Number of signs
0 - 2 miles	0
2 - 5 miles	6
More than 5 miles	Average of one sign per mile

The specified distances shall be measured to the nearest point of intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway.

(ii) Not more than two such signs may be permitted within any mile distance and no such signs may be permitted less than one thousand feet apart.

(iii) Type 1, 2, and 3 signs shall not be considered in determining compliance with the above spacing requirements.

(iv) Type 4 and Type 5 signs may not be permitted adjacent to interstate highway right of way within the limits of an interchange, including its entrance or exit roadways.

(v) Type 4 and Type 5 signs visible to interstate highway traffic, which has passed an entrance roadway, may not be permitted within one thousand feet of the point where the entrance roadway intersects with the interstate highway. The distance shall be measured from the intersection point farthest from the preceding interchange.

(vi) Not more than one Type 4 or Type 5 sign, advertising activities conducted as a single enterprise or giving information about a single place, may be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one interstate highway.

(e) The spacing of Type 4 and Type 5 signs visible to primary highways shall be restricted as follows:

(i) On limited access highways, no two signs may be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of a grade separated interchange, a safety rest area, or an information center, or within one thousand feet of an at-grade intersection. Not more than a total of five sign structures may be permitted per mile, including both sides of the highway. Double-faced (flanking or side-by-side) signs are prohibited.

(ii) On nonlimited access highways inside the boundaries of incorporated cities or towns, not more than a total of four sign structures, including both sides of the highway, may be permitted within a space of six hundred sixty feet or between platted intersecting streets or highways. There shall also be a minimum of one hundred feet between sign structures, including both sides of the highway.

(iii) On nonlimited access highways outside the boundaries of incorporated cities or towns, the minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(iv) Back-to-back signs and V-type signs shall be considered one sign structure.

(f) The minimum space between sign structures located on the same side of the highway shall be measured between two points along the nearest edge of pavement. The measurement points are established at the origin of lines extending perpendicular from the edge of pavement to the apparent centers of the sign structures.

(g) The minimum space between sign structures located on opposite sides of the highway shall be measured in the applicable manner following:

(i) Along tangent sections, sign spacing is measured between two points along the edge of pavement in the increasing milepost direction of travel. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the increasing direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the decreasing direction of travel.

(ii) Along horizontal curve sections, sign spacing is measured between two points on the edge of pavement along the arc on the inside of the curve. One measurement point is established at the origin of a line extending perpendicular

from the edge of pavement to the apparent center of the sign structure located along the highway in the increasing milepost direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the decreasing milepost direction of travel.

(h) Type 1, 2, 3, 7, and 8 signs shall not be considered in determining compliance with the above spacing requirements.

(i) Type 4 and Type 5 signs may be permitted within commercial and industrial areas adjacent to interstate and primary highways, provided that spacing is available as specified in (d) and (e) of this subsection.

(j) Type 4 and Type 5 signs are not permitted visible to the scenic system.

(k) Pursuant to the 1991 Intermodal Surface Transportation Efficiency Act, a National Scenic Byway Demonstration Project is established on State Route 101, from the Astoria/Megler Bridge to Fowler Street in Raymond and from the junction with State Route 109 near Queets to the junction with State Route 5 near Olympia. No new Type 4 or Type 5 signs may be permitted within the limits of this project. Type 4 or Type 5 signs installed prior to July 25, 1993, may remain as nonconforming signs.

(6) Type 6—((~~Signs lawfully in existence on October 22, 1965, determined by the department of transportation, subject to the approval of the United States Secretary of Transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW.~~))Landmark signs.

(a) Type 6 signs shall have been lawfully in existence on October 22, 1965, and have historic or artistic significance, including signs on farm structures or natural surfaces.

(b) Historic or artistic significance shall be determined by the department and approved by the Federal Highway Administration.

(c) Within the limits of the National Scenic Byway Demonstration Project identified in (5)(h) of this subsection, Type 6 signs may remain as nonconforming signs.

(7) Type 7—Public service signs located on school bus stop shelters((~~, which:~~

~~(a) Identify the donor, sponsor or contributor of said shelters;~~

~~(b) Contain safety slogans or messages which do not pertain to the donor and occupy not less than sixty percent of the area of the signs. In addition to this area limitation the donor identification portion of the sign may not appear more prominently than the safety slogan message;~~

~~(c) Contain no other message;~~

~~(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance, off the state highway right of way. School bus shelters shall not exceed 10 feet in length, 10 feet in width or 8 feet in height and shall be constructed with the upper 4 feet of the sides perpendicular to the roadway being occupied by the sign. The remainder is to be constructed of a see through nature. No school bus shelter shall be located along fully controlled access highways as specifically referenced in WAC 468-58-030;~~

~~(e) Do not exceed 32 square feet in area. Not more than one sign on each shelter may face in any one direction. The sign shall not protrude above the roof line or beyond the sides of the shelter;~~

~~(f) Signs erected pursuant to a permit issued by the department of transportation as provided in RCW 47.42.120 and 47.42.130 and the regulations issued thereunder. A permit shall be required for each individual sign face~~)). Type 7 signs may display safety slogans or messages, and identify the donor, sponsor, or contributor of a school bus stop shelter. No other message(s) may be displayed.

(a) Safety slogans or messages must occupy at least sixty percent of the sign area, and appear more predominant than the name of the donor, sponsor, or contributor.

(b) Type 7 signs may be located on school bus stop shelters only as authorized or approved by state law or regulation, or city or county ordinance or resolution, and may be installed visible to primary and scenic system highways.

(c) Type 7 signs may not exceed thirty-two square feet. A sign shall not protrude above the roofline or beyond the sides of the school bus stop shelter.

(d) Not more than one sign on each shelter may face in any one direction.

(e) The act does not regulate Type 7 signs with regard to zoning requirements or spacing between Type 7 signs and other types of signs.

(8) Type 8—Temporary agricultural directional signs((~~, with the following restrictions:~~

~~(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;~~

~~(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise (Type 3) sign;~~

~~(c) Signs shall not be placed within an incorporated city or town, but may be placed in unzoned areas and areas zoned for agricultural, commercial, and industrial activities;~~

~~(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;~~

~~(e) Signs must be located so as not to restrict sight distances on approaches to intersections, or restrict the visibility of other authorized signs;~~

~~(f) The minimum spacing between sign structures shall be three hundred feet. For the purposes of this subsection, a back to back sign and a V type sign shall be considered one sign structure (spacing is independent of off-premise (Type 4 and Type 5) signs)~~)). Type 8 signs provide directional information to places of business having seasonal agricultural products for sale.

(a) Type 8 signs may display the business name, product(s) for sale, travel direction, and travel distance to the nearest mile from the state highway to the business.

(b) Type 8 signs may not exceed thirty-two square feet.

(c) There shall be at least three hundred feet spacing between Type 8 signs.

(d) Not more than two signs advertising a place of temporary agricultural business may be installed visible to traffic proceeding in one direction of travel on any one state route.

(e) Premises on which the seasonal agricultural products are sold must be within fifteen air miles of the state highway.

(f) Type 8 signs may be posted only during the period of time the seasonal agricultural product(s) is being sold.

(g) Any necessary supplemental follow-through signs along city streets or county roads must be installed before the Type 8 signs may be installed visible to the state highway.

(h) The signs may be installed visible to primary system highways outside incorporated cities or towns, and scenic system highways.

(i) Type 8 signs may not be installed visible to interstate highways, including interstate highways that are also part of the scenic system, or visible to primary system highways within incorporated cities or towns.

(j) The act does not regulate Type 8 signs with regard to zoning requirements or spacing between Type 8 signs and other types of signs.

NEW SECTION

WAC 468-66-200 Nonconforming signs. (1) Nonconforming signs may be maintained, except as provided in subsection (3) of this section, unless otherwise removed pursuant to chapter 47.42 RCW.

(2) A nonconforming sign may be sold or leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right of way taking or for any other reason may be relocated to a conforming location but cannot be reestablished at another nonconforming location.

(3) A nonconforming sign may not be maintained if:

(a) The sign face size is increased more than fifteen percent over the original sign face size as of May 10, 1971 (the effective date of the Scenic Vistas Act), or as of the effective date of Scenic Vistas Act control over a given route, whichever applies;

(b) There are substantial changes to the sign structure's original construction materials, such as upgrades from wooden to steel signposts; or

(c) It is abandoned, destroyed, discontinued, or relocated, except as provided under subsection (2) of this section.

(4) Nonconforming signs shall be considered for sign spacing requirements pursuant to WAC 468-66-050.

(5) Destroyed nonconforming signs may only be reerected, and only in kind, if destroyed due to vandalism or other criminal or tortious acts.

NEW SECTION

WAC 468-66-210 Permit issuance and maintenance. (1) No signs except Type 1, Type 2, or Type 3 signs, shall be erected or maintained adjacent and visible to interstate system, primary system, or scenic system highways without a permit issued by the department. A permit to erect and maintain a sign that complies with the requirements of this chapter and is adjacent and visible to an interstate system, primary system, or scenic system highway will be issued by the department in accordance with this section. Subsections (2) through (8) of this section pertain to permits for Types 4, 5, 6, and 7 signs; subsection (9) of this section pertains to permits for Type 8 signs; subsection (10) of this section pertains to permits for Types 4, 5, and 8 signs; and subsections (11) and (12) of this section pertain to permits for Types 4, 5, 6, 7, and 8 signs.

(2) Permit applications for Types 4, 5, 6, and 7 signs will be accepted only at the department's headquarters located in Olympia, Washington. Applications transmitted by mail shall be considered received as of the date delivered to the department, rather than the postmarked date of mailing.

(3) Application forms, titled Application - Outdoor Advertising Sign Permit, shall be certified by the sign owner under penalty of perjury under the laws of the state of Washington and contain the information following:

(a) The name and address of the sign owner, with a signed statement that says "I, the undersigned applicant, declare under penalty of perjury under the laws of the state of Washington that the information provided herein, concerning the location of sign, sign description, and property owner/lessee, is accurate and true. I also acknowledge that any discrepancy in such information discovered hereafter is cause for the department of transportation to revoke this sign permit; and further declare that, after permit revocation, I shall remove without compensation any sign erected under such permit." The signature block shall also contain space for the sign owner to list the location, city, county, and state, where the sign owner signs the application.

(b) The statement and signature of the owner of the property on which the sign is to be erected and maintained, which states that the property owner consents to the sign installation and maintenance. A complete and valid lease between the sign owner and the property owner may be accepted in lieu of the property owner's statement and signature.

(c) A statement or site map that describes or shows both the precise location of the proposed sign site and a readily identifiable stake or other marker placed in the ground at the site.

(d) A description of the proposed sign's size, shape, and directional orientation to an identified state route.

(e) A description of the advertising copy or message to be placed on the sign, if the sign is intended to be visible to the interstate system.

(f) Other information that the department may require.

(4) Applications shall be accompanied by a nonrefundable fee of three hundred dollars for each sign structure, except Type 7 signs for which the fee is three hundred dollars for each sign face.

(5) Permits shall be for the remainder of the calendar year in which they are issued; accompanying fees shall not be prorated for fractions of the year. Permits are renewed annually through the certification process following:

(a) Prior to January 1 of each year the department shall require, through the use of a permit renewal certification form, permit renewal certification from each permit holder.

(i) To renew a permit, the permit holder or the permit holder's representative shall recertify by signature under penalty of perjury under the laws of the state of Washington that all information on the permit is accurate and that the permit

holder desires to retain the permit in good standing for the upcoming calendar year.

(ii) The completed permit renewal certification shall be returned to the department not later than December 31.

(b) If the department does not receive the required permit renewal certification by December 31, the permit will automatically terminate, the sign will become an illegal sign, and the department will initiate proceedings as authorized by RCW 47.42.080 to remove the illegal sign. The department shall cause the permit renewal certification form to contain this information.

(6) Changes in size, shape, or position of a permitted sign shall be reported to the department in Olympia at least ten days before a change is to be made. In the case of Type 4 and Type 5 signs permitted along the interstate system, changes in copy shall be reported to the department in Olympia at least ten days before a change is to be made to assure compliance with WAC 468-66-050 (5)(d)(vi).

(7) The department shall be notified when permits in good standing are assigned to another sign owner.

(8) If a permitted sign is intended for relocation, the sign owner must submit a new permit application.

(9)(a) Pursuant to RCW 47.42.130, for every permit issued the department shall also issue an aluminum tag that has the department-assigned permit number stamped on its face. The maximum size of the tag is sixteen square inches.

(b) The permittee shall fasten the aluminum tag to the sign so it is plainly visible to the highway.

(c) The department will replace a lost or otherwise missing aluminum tag after the sign owner pays a replacement fee of thirty dollars.

(10) For Type 8 signs, permit application forms, titled Permit Application - Temporary Agricultural Directional Sign, accompanied by a fee of fifty dollars for each sign face must be submitted to the appropriate region office of the department. Submittals must include the same information required by subsection (3)(a) through (f) of this section for Types 4, 5, 6, and 7 signs, and:

(a) An exact description of the location of the temporary agricultural business activity;

(b) A description of the proposed sign copy;

(c) Identification of the products sold;

(d) Expected weeks/months of sales; and

(e) The Uniform Business Identifier number assigned by the Washington state department of licensing.

After the department's region office approves the application, the permit becomes valid. The sign may be erected at the beginning of the sale season and shall be removed at the end of the sale season. The permit shall be valid for five consecutive years from the date of application approval. A new permit application must be submitted and approved by the department's region office prior to erecting a sign at a location where the five-year permit has expired.

(11) Where the number of applications for available Types 4, 5, 6, and 7 sign sites exceeds the number of available sites, permits shall be awarded on the basis of first received by date and time at the department's headquarters office in Olympia. Where the number of applications for available Type 8 sign sites exceeds the number of available sites, permits shall be awarded on the basis of first received by date and time at the department's regional office having jurisdiction over the sites. In the case of a tie between applicants, and upon notification thereof by the department, the department shall determine by lot which applicant shall receive the permit.

(12) A permit issued under this chapter does not relieve the permittee from the duty to comply with all local ordinances or resolutions pertaining to signs and sign structures.

(13) In the event the department has initiated permit revocation proceedings under WAC 468-66-220, the department shall not accept new permit applications for the sign location at issue until such proceedings are concluded and any required signs removed.

NEW SECTION

WAC 468-66-220 Permit revocation, remaining signs illegal. (1) Pursuant to RCW 47.42.120, after hearing the department may revoke a permit without refund for any of the reasons following:

(a) For making any false or misleading statement on an application for a new permit or during the annual permit renewal certification process, whether or not the statement is material to or relied upon by the department in issuing or renewing the permit; and when such false or misleading statement remains uncorrected after the expiration of thirty days following written notice thereof.

(b) For allowing a sign to remain in a condition of disrepair or unreasonable state of repair after the expiration of thirty days following written notification thereof.

(c) For maintaining a sign, for which a permit has been issued, in violation of any provision of the act or these regulations after the expiration of thirty days following written notice thereof.

(d) For any convictions of a violation of the act or any of these regulations, any permit held by the convicted person may be revoked after the expiration of thirty days following written notice thereof whether or not such violation is related to the sign for which the permit is revoked.

(e) For allowing a sign to remain after it has become abandoned, destroyed or discontinued, as defined in WAC 468-66-010, following written notice thereof. For abandoned or destroyed signs, the department will revoke the permit after the expiration of thirty days following written notice thereof. For discontinued signs, the department will cease permit revocation proceedings if the sign owner places advertising content on the sign within ninety days following written notice thereof.

(2)(a) Any written notice referenced in subsection (1) of this section shall be sent by first class mail, postage prepaid, to the permittee at their last known address on file with the department; and the permittee's receipt of said notice shall be deemed the third day after mailing.

(b) If the permittee does not comply with the written notice within thirty days, the department shall conduct a hearing, revoke the permit, and send written notice of the permit revocation to the permittee. Upon permit revocation the sign will become an illegal sign, and the department will initiate proceedings as authorized by RCW 47.42.080 to remove the

illegal sign. Review of the department's action shall be in compliance with RCW 47.42.060.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-66-055	National scenic byway demonstration project.
WAC 468-66-060	Signs along scenic, primary, and interstate systems.
WAC 468-66-070	On-premise signs (Type 3).
WAC 468-66-080	Number of signs and spacing requirements along interstate system.
WAC 468-66-090	Preference of applicants for Type 4, Type 5, and Type 8 sites.
WAC 468-66-100	Advertising copy.
WAC 468-66-110	Signs within commercial and industrial areas of primary system.
WAC 468-66-120	Signs erected prior to June 1, 1971 in commercial and industrial areas along the primary system.
WAC 468-66-130	Signs to be removed.
WAC 468-66-140	Permits.
WAC 468-66-150	Penalties.

WSR 05-23-078
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed November 15, 2005, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-135 on June 20, 2005.

Title of Rule and Other Identifying Information: WAC 388-478-0075 Medical programs—Monthly income standards based on federal poverty level (FPL).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on December 27, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. December 27, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 23, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising these rules to reinstate the children's health program for noncitizen children under age eighteen with income at or below 100% federal poverty level who are not otherwise eligible for Medicaid.

Reasons Supporting Proposal: These changes are legislatively required by E2SHB 1441 (chapter 279, Laws of 2005) and are made according to the governor's directive.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Statute Being Implemented: E2SHB 1441 (chapter 279, Laws of 2005).

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kathy Johansen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1321.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are exempt from the provisions of RCW 34.05.328 per RCW 34.05.328 (5)(b)(vii).

November 3, 2005
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-17-157, filed 8/22/05, effective 9/22/05)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) The department bases the income standard upon the Federal Poverty Level (FPL) for the following medical programs:

(a) Children's health program is one hundred percent of FPL;

(b) Pregnant women's program up to one hundred eighty-five percent of FPL;

((~~(b)~~)) (c) Children's categorically needy program up to two hundred percent of FPL;

((~~(c)~~)) (d) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

((~~(d)~~)) (e) The state children's health insurance program (SCHIP) is over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a Medicaid child.

(3) There are no resource limits for the programs under this section.

(4) Beginning April 1, 2005, the monthly FPL standards are:

FAMILY SIZE	100% FPL ((~~Benchmark~~))	133% FPL	150% FPL	185% FPL	200% FPL	220% FPL	250% FPL
1	$798	$1061	$1197	$1476	$1595	$1755	$1994
2	$1070	$1422	$1604	$1978	$2139	$2353	$2673
3	$1341	$1784	$2012	$2481	$2682	$2950	$3353
4	$1613	$2145	$2419	$2984	$3225	$3548	$4032
5	$1885	$2506	$2827	$3486	$3769	$4146	$4711
6	$2156	$2868	$3234	$3989	$4312	$4743	$5390
7	$2428	$3229	$3642	$4491	$4855	$5341	$6069
8	$2700	$3590	$4049	$4994	$5399	$5939	$6748
9	$2971	$3952	$4457	$5497	$5942	$6536	$7428
10	$3243	$4313	$4864	$5999	$6485	$7134	$8107
Add to the ten person standard for each person over ten:							
	$272	$362	$408	$503	$544	$598	$680

WSR 05-23-079
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 15, 2005, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-119.

Title of Rule and Other Identifying Information: The Division of Child Support (DCS) is amending WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted internet site?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on December 27, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. December 27, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 23, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCS seeks to clarify that the custodial parent must have an open child support case in order to request that DCS post the noncustodial parent's picture to the most wanted web site.

Reasons Supporting Proposal: Clarification of process is based on customer feedback, customer service.

Statutory Authority for Adoption: RCW 26.23.120(2) and 74.08.090.

Statute Being Implemented: RCW 26.23.120(2) and chapter 74.20A RCW.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS rules relating to liability for care of dependents are exempt from preparing a further analysis under RCW 34.05.328 (5)(b)(vii).

November 14, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted internet site? (1) If the child's custodial parent (CP) requests DCS to post the NCP to the DCS most wanted internet site (also called the "site"), the CP must:

(a) Have an open full support enforcement services case with DCS;

(b) Give written permission to DCS to post the NCP on the site; and

(((~~b~~))) (c) Provide a photograph of the NCP.

(2) Only the NCP's photograph appears on the site. If the CP submits a group photograph, DCS edits out everyone except the NCP.

(3) DCS may post an NCP to the site when((~~:~~

(~~a~~))) the NCP((~~:~~

(~~i~~))) has made no payments in at least six months (intercepted IRS refunds are not considered to be payments for purposes of this section)((~~;~~)) and

(((~~ii~~))) owes at least five thousand dollars in back child support((~~; or~~

(~~b~~))).

(4) DCS may post an NCP to the site when DCS has been unable to locate the NCP after trying other means for at least twelve months, and:

(((~~i~~))) (a) There is a valid support order; or

(((~~ii~~))) (b) There is a valid paternity affidavit filed for a child on the case, or

(((~~iii~~))) (c) The NCP is:

(((~~A~~))) (i) The mother of the child(ren) on the case; or

(((~~B~~))) (ii) The presumed father under RCW 26.26.320.

(5) If the NCP has more than one open DCS case, all custodial parents must provide written consent to the posting.

WSR 05-23-086
PROPOSED RULES
CENTRAL WASHINGTON UNIVERSITY

[Filed November 16, 2005, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-025.

Title of Rule and Other Identifying Information: Title: Substance use and drug testing. Other information: Rules were designed in accordance with NCAA (National Collegiate Athletic Association) regulations. Every student athlete is required to take a class that includes a nutrition component and a survey of the hazards of recreational, ergogenic, and restorative drugs commonly used by athletes.

Hearing Location(s): Barge 304, on January 4, 2006, at 3:00 p.m.

Date of Intended Adoption: February 3, 2006.

Submit Written Comments to: Judy Miller, CWU President's Office, 400 East University Way, Ellensburg, WA 98926-7501, e-mail miller@cwu.edu, fax (509) 963-3206, by January 4, 2006.

Assistance for Persons with Disabilities: Contact Pam Wilson by January 3, 2006, TTY (509) 963-2143.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The substance use/drug policy for Central Washington University athletes is designed to prevent substance abuse among student athletes by implementing probable-cause drug testing. The intent is to protect the personal health and safety of each athlete as well as to ensure an atmosphere of competitive equality. It will also provide an opportunity to intervene on behalf of an individual who has a drug abuse history or a perceived drug problem. This is a new proposal and does not change existing rules.

Reasons Supporting Proposal: Protects health and safety of student athletes, allows intervention on behalf of a person with a drug problem, conforms to requirements of NCAA participation.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

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

Name of Proponent: Judy Miller, President's Office, Central Washington University, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Ken Kladnik, Head Athletic Trainer, Athletics Department, Central Washington University, (509) 963-3238; and Enforcement: Jack Bishop, Athletic Director, (509) 963-1945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Rules relate only to internal operations that are not subject to violation by a nongovernmental party RCW 34.05.328 (5)(ii).

November 7, 2005
Jerilyn S. McIntyre
President

Chapter 106-121 WAC

SUBSTANCE USE AND DRUG TESTING

NEW SECTION

WAC 106-121-100 Purpose. The purpose of this policy is to prevent substance abuse among student athletes by implementing probable cause drug testing. The intent is to protect the personal health and safety of each athlete as well as to ensure an atmosphere of competitive equality. It will also provide an opportunity to intervene on behalf of an individual who has a drug abuse history or a perceived drug problem.

NEW SECTION

WAC 106-121-110 Education. Central Washington University and the CWU athletic department are committed to maintaining a drug free environment. An important component is educating the student athlete on the effects and consequences of substance abuse. In order to accomplish this

goal, a class entitled Drugs in Sports (HED 205) is offered every term. This two-credit course includes surveying the potential hazards of recreational, ergogenic, and restorative drugs commonly used by athletes. It also includes information on nutritional supplements and NCAA drug testing policies and procedures. Every student athlete is required to take this class during their first year and no later than their second year of participation. This course will also serve as our mandatory NCAA drug education component.

NEW SECTION

WAC 106-121-120 Drugs to be tested. (1) Stimulants including amphetamines and ephedra derivatives.

(2) Cocaine.

(3) Marijuana (THC).

(4) Anabolic steroids (testosterone levels greater than 6:1).

NEW SECTION

WAC 106-121-130 Reasonable suspicion. (1) To be considered reasonable suspicion, evidence must be based upon a specific event or occurrence in which the student athlete has been presumed to use drugs; these would include, but are not limited to:

(a) Direct observation by coaches, athletic trainers, or physicians involving suspicious medical symptomatic changes inherent to suspected substance abuse;

(b) Frequent, unexplained absenteeism;

(c) Significant changes in behavior;

(d) Obviously suspicious conduct;

(e) Common sense conclusions of abnormal human behavior;

(f) Previously positive drug test;

(g) Evidence reported from a reliable third party;

(h) Physical evidence pointing to drug abuse; and

(i) Possession of drug paraphernalia.

Each event or reasonable suspicion must be separate and unrelated to a previous incident.

(2) A drug test can also be requested by anyone who has objective information within the realms of reasonable suspicion. This may include reliable third parties. This request is to be made verbally (in person or by phone) or in writing (letter, fax or e-mail) to the team physician or other medical practitioner at the Central Washington University student health center (SHC), should the team physician be unavailable. SHC personnel shall decide if the suspicion warrants the drug testing process and, if warranted, authorize it.

(3) Athletes may also self-refer, if they feel that they may have accidentally or inadvertently taken any controlled substance. Any positive test based on this "safe harbor" testing shall result in the individual being referred to the CWU wellness center to determine the cause of the positive test and how it can be avoided in the future. The student athlete is eligible for self-referral one time only unless indicated otherwise by their counselor.

NEW SECTION

WAC 106-121-140 Drug testing procedures. Each year, prior to participation, every athlete will review copies of the NCAA and CWU drug testing policies and sign consent forms agreeing to testing as specified in the policies. Failure to do so will result in ineligibility for intercollegiate athletic participation. Detailed drug testing procedures and testing forms are available online in the university procedures manual http://www.cwu.edu/~pres/procedures/Part1.html.

NEW SECTION

WAC 106-121-150 Alcohol policy. (1) Central Washington University does not condone the illegal or irresponsible use of alcohol. Both abuse of and dependence on alcohol can impair brain function, dull judgment, reduce alertness, and lead to life-altering consequences. University staff and faculty are expected to conduct themselves in an exemplary fashion and adhere to university, federal, state, and city laws related to alcohol. Violations are punishable by state laws and subject to prosecution. Student violators are also subject under the student judicial code.

(2) Consumption of alcohol is expressly prohibited in connection with any official intercollegiate team function; that is, any activity held at or under the direction and supervision of a member of the coaching staff.

(3) Sanctions for involvement with alcohol under conditions prohibited by the athletic department, but in which there are no legal implications, will be determined by the head coach and athletic director. Depending upon circumstances, sanctions may include suspension from practice and/or competition as well as other appropriate consequences to include referral to the division of student affairs and enrollment management for proper action under the student judicial code.

(4) According to Washington Administrative Code (WAC 106-120-027), a student shall be subject to disciplinary action or sanction upon violation of the university policy on alcoholic beverages which states:

(a) Persons twenty-one years of age or older may possess and/or consume alcoholic beverages within the privacy of their residence hall rooms or apartments. Washington state law provides severe penalties for the possession or consumption of alcoholic beverages by persons under twenty-one years of age and for persons who furnish alcoholic beverages to minors.

(b) The university does not condone the consumption of alcoholic beverages by minors at functions sponsored by Central Washington University organizations. Organizations are held responsible for the conduct of their members at functions sponsored by the organization and for failure to comply with Washington state law.

(c) The campus judicial council, including the vice-president for student affairs and enrollment management, may place any organization on probation or prohibit a specific campus social function when the consumption of alcoholic beverages has become a problem of concern to the university.

(5) Violations of the rules of student conduct will result in sanctions imposed by the division of student affairs and enrollment management and will include:

(a) Warning;

(b) Disciplinary probations;
(c) Restitution;
(d) Deferred suspension;
(e) Suspension; or
(f) Expulsion.

A complete explanation of each of these penalties and a complete copy of the Central Washington University drug and alcohol policy is available in the office of the vice-president for student affairs and enrollment management.

WSR 05-23-097
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed November 17, 2005, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-095.

Title of Rule and Other Identifying Information: Dental, WAC 246-817-440 Continuing education requirements.

Hearing Location(s): Department of Health, Point Plaza East, Room #152/153, 310 Israel Road S.E., Tumwater, WA 98501, on February 3, 2006, at 8:30 a.m.

Date of Intended Adoption: February 3, 2006.

Submit Written Comments to: Lisa Anderson, Program Manager, P.O. Box 47867, Olympia, WA 98504-7867, e-mail lisa.anderson@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 664-9077, by January 16, 2006.

Assistance for Persons with Disabilities: Contact Lisa Anderson by January 25, 2006, TTY (800) 833-6388 or (360) 236-4863.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends WAC 246-817-440 Continuing education requirements. The amendment will increase the maximum number of continuing dental education hours allowed for self study from three hours to seven hours per year. Home study includes educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion.

Reasons Supporting Proposal: The proposed rule is being amended at stakeholder request to provide more flexibility to dentists as they obtain their annual continuing dental education hours. Additionally, the proposed rule will encourage dentists to obtain current knowledge, skills, and information about new dental technology and practices. This should enhance the practitioners overall practice as a dentist.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: Chapter 18.32 RCW.

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

Name of Proponent: Department of Health, Dental Quality Assurance Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Anderson, Program Manager, Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4863.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Department of Health has reviewed this proposal and has determined that a small business economic impact statement is not required under the parameters of chapter 19.85 RCW. The proposed rule is simply a redistribution of the number of continuing education hours that can be earned in a specific category.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Anderson, Department of Health, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4863, fax (360) 664-9077, e-mail lisa.anderson@doh.wa.gov.

October 24, 2005
Joy N. King
Executive Director

AMENDATORY SECTION (Amending WSR 01-16-007, filed 7/19/01, effective 8/19/01)

WAC 246-817-440 Continuing education requirements. (1) **Purpose.** The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.

(2) **Effective date.** The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every licensed dentist ((~~will be required to~~)) must sign an affidavit attesting to the completion of the required number of hours as a part of their annual renewal requirement.

(3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC may randomly audit up to twenty-five percent of practitioners for compliance after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

(4) **Acceptable continuing education - Qualification of courses for continuing education credit.** DQAC will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education ((~~shall be defined as~~)) means courses offered or authorized by industry recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:

(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organi-

zations, including the constituent and component/branch societies.

(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed ((~~three~~)) seven hours per year.

(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.

(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate planning, financial planning, investments, and personal health courses are not acceptable.

(f) Dental examination standardization and calibration workshops.

(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.

(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers ((~~including:~~

~~(a) When is continuing education required?~~

~~(b) How to prove compliance.~~

~~(c) Auditing for compliance.~~

~~(d) What is acceptable audit documentation?~~

~~(e) When is a practitioner exempt from continuing education?~~

~~(f) How credit hours for continuing education courses are determined.~~

~~(g) Carrying over continuing education credits.~~

~~(h) Taking the same course more than once during a reporting cycle~~)).

WSR 05-23-108
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 18, 2005, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-032 on August 30, 2005.

Title of Rule and Other Identifying Information: WAC 388-452-0010 What does the family violence amendment mean for TANF/SFA recipients?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on December 27, 2005, at 10:00 p.m. [a.m.]

Date of Intended Adoption: Not earlier than December 28, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 27, 2005.

Assistance for Persons with Disabilities: Contact Contact Stephanie Schiller, DSHS Rules Consultant, by December 23, 2005, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to replace references to "family violence amendment" with the correct reference "family violence option."

Reasons Supporting Proposal: The proposed language clarifies which program the exemption is allowed under.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.08A.340.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.08A.340.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stacey Bushaw, 1009 College S.E., Lacey, WA 98504, (360) 725-4622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments are exempt as allowed under RCW 19.85.025(3) which states "…[t]his chapter does not apply to the adoption of a rule as described in RCW 34.05.310(4)."

RCW 34.05.310(4) states in-part, "[t]his section does not apply to….(c) [r]ules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect." The proposed rule clarifies the content without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(iv) which states in-part, "[t]his section does not apply to…. [r]ules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect."

November 15, 2005
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-452-0010 What does the family violence ((~~amendment~~)) option mean for TANF/SFA recipients? The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ((~~also known as the Welfare Reform Act,~~)) gave every state the option to have ((~~a program~~)) procedures in place to address issues of family violence for recipients receiving temporary assistance for needy

families (TANF) ((~~and~~)) or state family assistance (SFA) ((~~recipients~~)).

(1) For TANF/SFA, it is family violence when a recipient, or family member or household member has been subjected by another family member or household member as defined in RCW 26.50.010(2) to one of the following:

(a) Physical acts that resulted in, or threatened to result in, physical injury;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative or a dependent child to engage in nonconsensual sexual acts or activities;

(e) Threats of or attempts at, physical sexual abuse;

(f) Mental abuse;

(g) Neglect or deprivation of medical care; or

(h) Stalking.

(2) Under the family violence option DSHS ((~~shall~~)) must:

(a) Screen and identify TANF/SFA recipients for a history of family violence;

(b) Notify TANF/SFA recipients about the family violence ((~~amendment~~)) option both verbally and in writing;

(c) Maintain confidentiality as stated in RCW 74.04.060;

(d) Offer referral to social services or other resources for ((~~clients~~)) recipients who meet the criteria in subsection (1) of this section;

(e) Waive WorkFirst requirements ((~~that~~)) in cases where the requirements would make it more difficult to escape family violence, unfairly penalize victims of family violence((~~, would make it more difficult to escape family violence~~)) or place victims at further risk. Requirements to be waived may include:

(i) Time limits for TANF/SFA recipients, for as long as necessary (after fifty-two months of receiving TANF/SFA);

(ii) Cooperation with the division of child support.

(f) Develop specialized work activities for instances where participation in regular work activities would place the recipient at further risk of family violence.

WSR 05-23-130
PROPOSED RULES
GAMBLING COMMISSION

[Filed November 21, 2005, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-037.

Title of Rule and Other Identifying Information: WAC 230-08-120, 230-08-125, 230-08-180, and 230-08-250.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (509) 248-8220, on January 13, 2006, at 9:30 a.m.

Date of Intended Adoption: January 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625 by January 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by January 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules relate to the activity reports we require from licensees that offer bingo, raffles, and amusement games. The rules describe who must complete the activity reports, when the reports are due, who must sign the reports, and describes each line item of the report, such as gross gambling receipts, prizes paid, net gambling receipts, full details of all expenses, allocation methods used, net income, etc. Because the requirements are listed in the rules, changes to the forms cannot be made unless the rules are changed. Staff propose removing the specific line items from the rules.

Earlier in 2005, the commissioners approved streamlined financial activity reporting rules for commercial operators by eliminating the listing of each specific item to be reported. Now those rules state that instructions will provide the details on what needs to be reported. The proposed changes to bingo, raffles and amusement game activity reports will make these rules consistent with the other streamlined rules relating to activity reporting. This change will facilitate progress toward future online activity reporting.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Monty Harmon, Harmon Consulting, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington State Gambling Commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 18, 2005
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 251, filed 5/17/94, effective 7/1/94)

WAC 230-08-120 Quarterly activity report by operators of bingo games (license Class D and above). Each organization licensed to conduct bingo games in Class D and above shall submit an activity report to the commission concerning the licensed activity and other matters set forth below during each of the following periods of the year:

(1) Licensees must report on activity occurring between:

January 1st through March 31st
April 1st through June 30th
July 1st through September 30th
October 1st through December 31st

((~~If the licensee does not renew its license, then it shall file a report for the period between the previous report filed and the expiration date of its license.~~)) (2) A report shall be submitted for any period of time the activity was operated or a license was valid. If a license was not renewed, a report for the period between the previous report and the expiration date shall be submitted.

(3) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the end of the period for which it is made.

(4) The report shall be signed by the highest ranking officer or his/her designee. If the report is prepared by someone other than the licensee or an employee, then the preparer shall print his/her name and phone number on the report.

(5) The report shall be completed in accordance with the related instructions furnished with the report. ((~~The report shall include, among other items, the following:~~

~~(1) The gross gambling receipts from bingo.~~

~~(2) The total amount of cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually paid out. Donated prizes will be recorded at the fair market value of the prize at the time they were received by the organization.~~

~~(3) The net gambling receipts.~~

~~(4) Full details on all expenses directly related to bingo, including at least the following:~~

~~(a) Wages, monies, or things of value paid or given to each person connected with the management, promotion, conduct or operation of the bingo game together with an attachment setting out the following:~~

~~(i) Name;~~

~~(ii) Duties performed;~~

~~(iii) Hours worked; and~~

~~(iv) Wages, monies or things of value paid or given for conducting bingo activities. When an employee works in more than one activity, the total hours worked and total wages shall also be reported;~~

~~(b) A statement describing the allocation method used in allocating common use expenses; and~~

~~(c) A detailed listing of all items included under "other."~~

~~(5) The net income.~~

~~(6) The total number of customers participating.~~

~~(7) The total number of sessions held.~~

~~(8) Net income from the operation of retail sales activities operated in conjunction with bingo games.~~))

AMENDATORY SECTION (Amending Order 304, filed 11/21/96, effective 1/1/97)

WAC 230-08-125 Annual activity reports—Certain activities operated by charitable or nonprofit organizations. Each charitable or nonprofit organization licensed to operate raffles, amusement games, Class A, B, or C bingo games, or combination license shall submit to the commission an annual summary of all such activities. The annual report shall be completed as follows:

(1) The report form shall be furnished by the commission, and the completed report shall be received in the office of the commission or postmarked no later than thirty days following the expiration of such organization's license year.

(2) The report shall be signed by the highest ranking officer or his/her designee. If the report is prepared by someone other than this officer, then the preparer shall include his/her name and phone number on the report;

(3) The report shall be completed in accordance with the related instructions furnished with the report. ((~~The report shall include, among other items, the following:~~

~~(a) The gross gambling receipts from the conduct of each licensed activity;~~

~~(b) The total amount of cash prizes actually paid out, and the total of the cost to the licensee of all merchandise prizes actually paid out for each licensed activity. Donated prizes will be recorded at the fair market value of the prize at the time they were received by the organization;~~

~~(c) The net gambling receipts for each activity;~~

~~(d) Full details on all expenses directly related to each activity, including all compensation paid by the licensee to each person for any work connected with the management, promotion, conduct or operation of each of the licensed activities, including a description of the work performed by that person: Provided, That RCW 9.46.0277 and WAC 230-20-070 are observed in relation to the restriction against employing persons to conduct or otherwise take part in the operation of a raffle;~~

~~(e) The net income from each activity;~~

~~(f) The total number of sessions conducted during the year; and~~

~~(g) The total number of players participating in bingo games.~~

~~(4) In addition, organizations that operate retail sales activities in conjunction with bingo games shall report the net income from such.~~))

AMENDATORY SECTION (Amending WSR 92-21-021, filed 10/13/92, effective 11/13/92)

WAC 230-08-180 Annual activity reports by commercial amusement game operators. (License Class B and above) (1) Each licensee for the operation of commercial amusement games Class B and above shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below.

(2) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than sixty days following the license expiration date.

(3) The report shall be signed by the highest ranking executive officer or their designee. If the report is prepared by someone other than the licensee or their employee, then the preparer's name and business telephone number must be provided.

(4) The report shall be completed in accordance with the related instructions furnished with the report. ((~~The report shall include the following:~~

~~(a) The total gross gambling receipts;~~

~~(b) The total cost to the licensee of all prizes awarded;~~

~~(c) Full details of all expenses related to the purchase and operation of amusement games;~~

~~(d) Total net gambling income;~~

~~(5) In addition to the above, commercial amusement game licensees operating amusement games at locations on a temporary basis set forth in WAC 230-04-138 (1)(a), (d), or (e) or as authorized by WAC 230-20-670(2) shall provide for each separate location:~~

~~(a) The name and address of the business and/or event;~~

~~(b) The total gross gambling receipts received; and~~

~~(c) The amount of funds distributed to the premise/location owner.~~))

AMENDATORY SECTION (Amending Order 147, filed 2/22/85)

WAC 230-08-250 Annual activity reports by agricultural fairs and other bona fide charitable or nonprofit organizations with special location licenses to conduct bingo, raffles, and amusement games. (1) Each bona fide charitable or nonprofit licensee for the operation of bingo, raffles, and amusement games conducted only at agricultural fairs and other special locations shall submit an activity report to the commission concerning the operation of the licensed activities and other matters set forth below for the period of their license.

(2) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the expiration date of the license. All persons operating by virtue of a permit issued by the commission shall furnish to the licensee in conjunction with whom the permit is used, all information with respect to their own operation which is needed by the licensee to complete its report not less than ten days prior to the time the licensee is required to file his report with the commission.

(3) The report shall be signed by the highest ranking executive officer or his designee. If the report is prepared by someone other than the licensee or his employee, then the preparer shall also sign the report.

((~~The report shall include, among other items, the following:~~

~~(1) The gross receipts from each separate gambling activity;~~

~~(2) The total cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually paid out for each separate gambling activity;~~

~~(3) The net receipts for each separate gambling activity;~~

~~(4) Full details on all expenses directly related to each separate gambling activity;~~

~~(5) The net income from each separate gambling activity; and~~

~~(6) The gross receipts from the rental or leasing of space for licensed gambling activities.~~)) (4) The report shall be completed in accordance with the related instructions furnished with the report.

WSR 05-23-138
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 22, 2005, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-09-061.

Title of Rule and Other Identifying Information: Chapter 296-856 WAC, Formaldehyde; chapter 296-62 WAC, General occupational health standards; WAC 296-155-160 Gases, vapors, fumes, dusts, and mists; 296-307-56045 Label containers of hazardous chemicals; 296-307-62625 Permissible exposure limits of air contaminants; 296-307-624 Scope; 296-839-40005 Label containers of hazardous chemicals; and 296-841-100 Scope.

The Department of Labor and Industries is proposing to rewrite and clarify requirements relating to formaldehyde. This rule making is part of our clear rule-writing initiative to rewrite all of our general occupational safety and health rules for clarity. This proposal will move the formaldehyde requirements from chapter 296-62 WAC to new chapter 296-856 WAC, Formaldehyde.

AMENDED SECTIONS:

WAC 296-62-07540 Formaldehyde.

- The requirements from this section are moved to chapter 296-856 WAC, Formaldehyde.
- A note is added to clarify that the requirements in this WAC section apply only to agriculture.

WAC 296-155-160 Gases, vapors, fumes, dusts, and mists.

- Update a reference.

WAC 296-307-56045 Label containers of hazardous chemicals.

- Update a reference.

WAC 296-307-62625 Permissible exposure limits of air contaminants.

- Update a reference.

WAC 296-307-624 Scope.

- Update a reference.

WAC 296-839-40005 Label containers of hazardous chemicals.

- Update a reference.

WAC 296-841-100 Scope.

- Update a reference.

NEW SECTIONS:

WAC 296-856-100 Scope.

- Added language to this section relating to what this chapter covers.

WAC 296-856-200 Basic rules, section contents.

- This section gives a brief employer responsibility statement and includes a short table of contents of the sections located in this 3-digit WAC number.

WAC 296-856-20010 Preventive practices.

- This section requires that hazards are properly communicated and containers are properly labeled for any known or potential hazards.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-20020 Training.

- This section requires that employees are provided training and information regarding exposures to formaldehyde.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-20030 Personal protective equipment (PPE).

- This section requires that employees are provided proper PPE and protection in areas where formaldehyde exposure could occur, at no cost to the employee.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-20040 Employee protective measures.

- This section requires implementation of appropriate measures for employees performing activities with exposure to airborne formaldehyde.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-20050 Exposure evaluations.

- This section requires the employer to conduct an employee exposure evaluation to accurately determine airborne concentrations of formaldehyde in the workplace.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-20060 Notification.

- This section requires the employer to provide written exposure monitoring results to the employees within five business days after an exposure evaluation. Notification requirements in the current rule is fifteen days. This change is consistent with notification times in other substance specific hygiene rules.
- No requirements have been added.

WAC 296-856-20070 Exposure records.

- This section requires the employer to keep complete and accurate records for all exposure monitoring related to formaldehyde.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-300 Exposure and medical monitoring.

- This section gives a brief employer responsibility statement and includes a short table of contents of the sections located in this 3-digit WAC number.

WAC 296-856-30010 Periodic exposure evaluations.

- This section requires the employer to obtain employee exposure monitoring results as specified in Table 2, Periodic exposure evaluation frequencies, in this section.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-30020 Medical and emergency evaluations.

- This section requires that medical and emergency evaluations and examinations be provided to employees exposed to formaldehyde.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-30030 Medical removal.

- This section requires removal of employees who report signs or symptoms of formaldehyde exposure.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-857-30040 Multiple LHCP review.

- This section requires that employees are notified that they may seek second and third opinions from a licensed health care professional
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-30050 Medical records.

- This section requires the employer to establish and maintain complete and accurate medical records for each employee receiving a medical evaluation for formaldehyde.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-400 Exposure control areas.

- This section gives a brief employer responsibility statement and includes a short table of contents of the sections located in this 3-digit WAC number.

WAC 296-856-40010 Exposure controls.

- This section requires the use of exposure controls to reduce employee exposures to formaldehyde concentration levels below the permissible exposure limit (PEL).
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-40020 Establishing exposure control areas.

- This section requires the employer to establish temporary or permanent exposure control areas where airborne concentrations of formaldehyde are above the short-term exposure limit (STEL) or eight-hour time weighted average.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

WAC 296-856-40030 Respirators.

- This section requires that employees use respirator protection in exposure control areas. This section also requires that air-purifying chemical cartridges are replaced according to the manufacturers change-out schedules.
- The requirements in this section are currently located in WAC 296-62-07540. No requirements have been added.

Hearing Location(s): Department of Labor and Industries Building, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on January 9, 2006, at 1:30 p.m.

Date of Intended Adoption: April 4, 2006.

Submit Written Comments to: Carol Stevenson, P.O. Box 44635, Olympia, WA 98504-4635, e-mail stei235@lni.wa.gov, fax (360) 902-5529, by January 17, 2006.

Assistance for Persons with Disabilities: Contact Kimberly Johnson, (360) 902-5008, e-mail rhok235@lni.wa.gov by December 15, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The formaldehyde rules, in chapter 296-62 WAC, contain requirements relating to formaldehyde. These requirements will be rewritten and moved into chapter 296-856 WAC, Formaldehyde.

Chapter 296-841 WAC, Respiratory hazards, requires that employees be notified of exposure results over the PEL within five days to meet the requirements of RCW 49-17-220 [49.17.220] for "prompt" notification. The chapter further specifies that notification for specific rules be "In writing, as specified in the rule specific to the substance." The requirement in the formaldehyde rule, proposed chapter 296-856 WAC, will require employers to notify employees of monitoring results within five days of receiving the results. Currently, the employers are required to provide notification within fifteen days. This requirement has been changed to be consistent with the notification times for substance-specific hygiene rules.

There are no anticipated effects of this rule making.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of Labor and Industries, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires a small business economic impact statement (SBEIS) only when a rule will "impose more than a minor cost on businesses in an industry." An analysis of the proposed rule reveals that in addition to not imposing new costs on businesses, these revisions will make WISHA rules easier for employers and employees to understand and use, and thus save time and resources. Therefore, no SBEIS is required.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs to assess within these rule amendments. The amendments would require employers to provide notification of exposure evaluation results to employees within five days. Currently, employers are required to provide this information within fifteen days. This amendment will require employers to provide data that they already have, to employees quicker, and will not require additional costs. This amendment is consistent with notification times for substance-specific hygiene rules. The department determined the proposed changes do not require a cost-benefit analysis because the costs associated with the proposed changes are exempted by the law since they are clarifying the rule for ease of use and understanding. (See RCW 19.85.025 referencing RCW 34.05.310 (4)(d).)

November 22, 2005
Gary Weeks
Director

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

WAC 296-62-07540 Formaldehyde.

Note: The requirements in this chapter apply only to agriculture. The general industry requirements relating to formaldehyde have been moved to chapter 296-856 WAC, Formaldehyde.

(1) Scope and application. This standard applies to all occupational exposures to formaldehyde, i.e., from formaldehyde gas, its solutions, and materials that release formaldehyde.

(2) Definitions. For purposes of this standard, the following definitions shall apply:

(a) "Action level" means a concentration of 0.5 part formaldehyde per million parts of air (0.5 ppm) calculated as an 8-hour time-weighted average (TWA) concentration.

(b) "Approved" means approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, the provision of WAC 296-800-370 shall apply.

(c) "Authorized person" means any person required by work duties to be present in regulated work areas, or authorized to do so by the employer, by this section of the standard, or by the WISHA Act.

(d) "Director" means the director of the department of labor and industries, or his/her designated representative.

(e) "Emergency" is any occurrence, such as but not limited to equipment failure, rupture of containers, or failure of

control equipment that results in an uncontrolled release of a significant amount of formaldehyde.

(f) "Employee exposure" means the exposure to airborne formaldehyde which would occur without corrections for protection provided by any respirator that is in use.

(g) "Formaldehyde" means the chemical substance, HCHO, Chemical Abstracts Service Registry No. 50-00-0.

(3) Permissible exposure limit (PEL).

(a) TWA: The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 part formaldehyde per million parts of air as an 8-hour TWA.

(b) Short term exposure limit (STEL): The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds two parts formaldehyde per million parts of air (2 ppm) as a fifteen-minute STEL.

(4) Exposure monitoring.

(a) General.

(i) Each employer who has a workplace covered by this standard shall monitor employees to determine their exposure to formaldehyde.

(ii) Exception. Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde.

(iii) When an employee's exposure is determined from representative sampling, the measurements used shall be representative of the employee's full shift or short-term exposure to formaldehyde, as appropriate.

(iv) Representative samples for each job classification in each work area shall be taken for each shift unless the employer can document with objective data that exposure levels for a given job classification are equivalent for different workshifts.

(b) Initial monitoring. The employer shall identify all employees who may be exposed at or above the action level or at or above the STEL and accurately determine the exposure of each employee so identified.

(i) Unless the employer chooses to measure the exposure of each employee potentially exposed to formaldehyde, the employer shall develop a representative sampling strategy and measure sufficient exposures within each job classification for each workshift to correctly characterize and not underestimate the exposure of any employee within each exposure group.

(ii) The initial monitoring process shall be repeated each time there is a change in production, equipment, process, personnel, or control measures which may result in new or additional exposure to formaldehyde.

(iii) If the employer receives reports or signs or symptoms of respiratory or dermal conditions associated with formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

(c) Periodic monitoring.

(i) The employer shall periodically measure and accurately determine exposure to formaldehyde for employees shown by the initial monitoring to be exposed at or above the action level or at or above the STEL.

(ii) If the last monitoring results reveal employee exposure at or above the action level, the employer shall repeat monitoring of the employees at least every six months.

(iii) If the last monitoring results reveal employee exposure at or above the STEL, the employer shall repeat monitoring of the employees at least once a year under worst conditions.

(d) Termination of monitoring. The employer may discontinue periodic monitoring for employees if results from two consecutive sampling periods taken at least seven days apart show that employee exposure is below the action level and the STEL. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(e) Accuracy of monitoring. Monitoring shall be accurate, at the ninety-five percent confidence level, to within plus or minus twenty-five percent for airborne concentrations of formaldehyde at the TWA and the STEL and to within plus or minus thirty-five percent for airborne concentrations of formaldehyde at the action level.

(f) Employee notification of monitoring results. Within fifteen days of receiving the results of exposure monitoring conducted under this standard, the employer shall notify the affected employees of these results. Notification shall be in writing, either by distributing copies of the results to the employees or by posting the results. If the employee exposure is over either PEL, the employer shall develop and implement a written plan to reduce employee exposure to or below both PELs, and give written notice to employees. The written notice shall contain a description of the corrective action being taken by the employer to decrease exposure.

(g) Observation of monitoring.

(i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to formaldehyde required by this standard.

(ii) When observation of the monitoring of employee exposure to formaldehyde requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the clothing and equipment to the observer, require the observer to use such clothing and equipment, and assure that the observer complies with all other applicable safety and health procedures.

(5) Regulated areas.

(a) The employer shall establish regulated areas where the concentration of airborne formaldehyde exceeds either the TWA or the STEL and post all entrances and accessways with signs bearing the following information:

DANGER
FORMALDEHYDE
IRRITANT AND POTENTIAL CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(b) The employer shall limit access to regulated areas to authorized persons who have been trained to recognize the hazards of formaldehyde.

(c) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to other employers with work operations at that worksite.

(6) Methods of compliance.

(a) Engineering controls and work practices. The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to formaldehyde at or below the TWA and the STEL.

(b) Exception. Whenever the employer has established that feasible engineering and work practice controls cannot reduce employee exposure to or below either of the PELs, the employer shall apply these controls to reduce employee exposures to the extent feasible and shall supplement them with respirators which satisfy this standard.

(7) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls;

(ii) Work operations, such as maintenance and repair activities or vessel cleaning, for which the employer establishes that engineering and work-practice controls are not feasible;

(iii) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce exposure to or below the PELs;

(iv) Emergencies.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) If air-purifying chemical-cartridge respirators are used, the employer must:

(A) Replace the cartridge after three hours of use or at the end of the workshift, whichever occurs first, unless the cartridge contains a NIOSH-certified end-of-service-life indicator (ESLI) to show when breakthrough occurs.

(B) Unless the canister contains a NIOSH-certified ESLI to show when breakthrough occurs, replace canisters used in atmospheres up to 7.5 ppm (10 x PEL) every four hours and industrial-sized canisters used in atmospheres up to 75 ppm (100 x PEL) every two hours, or at the end of the workshift, whichever occurs first.

(c) Respirator selection.

(i) The employer must select appropriate respirators from Table 1 of this section.

TABLE 1
MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use or formaldehyde concentration (ppm)	Minimum respirator required[1]
Up to 7.5 ppm (10 x PEL)	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde[2].
Up to 75 ppm (100 x PEL) . . .	Full-face mask with chin style or chest or back mounted type industrial size canister specifically approved for protection against formaldehyde. Type C supplied-air respirator pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 75 ppm or unknown (emergencies) (100 x PEL)	Self-contained breathing apparatus (SCBA) with positive-pressure full facepiece. Combination supplied-air, full facepiece positive-pressure respirator with auxiliary self-contained air supply.
Fire fighting	SCBA with positive-pressure in full facepiece.
Escape.	SCBA in demand or pressure demand mode. Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

[1] Respirators specified for use at higher concentrations may be used at lower concentrations.

[2] A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full facepiece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

(ii) The employer must provide a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who has difficulty using a negative-pressure respirator.

(8) Protective equipment and clothing. Employers shall comply with the provisions of WAC 296-800-160. When protective equipment or clothing is provided under these provisions, the employer shall provide these protective devices at no cost to the employee and assure that the employee wears them.

(a) Selection. The employer shall select protective clothing and equipment based upon the form of formaldehyde to

be encountered, the conditions of use, and the hazard to be prevented.

(i) All contact of the eyes and skin with liquids containing one percent or more formaldehyde shall be prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.

(ii) Contact with irritating or sensitizing materials shall be prevented to the extent necessary to eliminate the hazard.

(iii) Where a face shield is worn, chemical safety goggles are also required if there is a danger of formaldehyde reaching the area of the eye.

(iv) Full body protection shall be worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.

(b) Maintenance of protective equipment and clothing.

(i) The employer shall assure that protective equipment and clothing that has become contaminated with formaldehyde is cleaned or laundered before its reuse.

(ii) When ventilating formaldehyde-contaminated clothing and equipment, the employer shall establish a storage area so that employee exposure is minimized. Containers for contaminated clothing and equipment and storage areas shall have labels and signs containing the following information:

DANGER
FORMALDEHYDE-CONTAMINATED (CLOTHING) EQUIPMENT
AVOID INHALATION AND SKIN CONTACT

(iii) The employer shall assure that only persons trained to recognize the hazards of formaldehyde remove the contaminated material from the storage area for purposes of cleaning, laundering, or disposal.

(iv) The employer shall assure that no employee takes home equipment or clothing that is contaminated with formaldehyde.

(v) The employer shall repair or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(vi) The employer shall inform any person who launders, cleans, or repairs such clothing or equipment of formaldehyde's potentially harmful effects and of procedures to safely handle the clothing and equipment.

(9) Hygiene protection.

(a) The employer shall provide change rooms, as described in WAC 296-24-120 for employees who are required to change from work clothing into protective clothing to prevent skin contact with formaldehyde.

(b) If employees' skin may become splashed with solutions containing one percent or greater formaldehyde, for example because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(c) If there is any possibility that an employee's eyes may be splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use.

(10) Housekeeping. For operations involving formaldehyde liquids or gas, the employer shall conduct a program to detect leaks and spills, including regular visual inspections.

(a) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at regular intervals.

(b) In work areas where spillage may occur, the employer shall make provisions to contain the spill, to decontaminate the work area, and to dispose of the waste.

(c) The employer shall assure that all leaks are repaired and spills are cleaned promptly by employees wearing suitable protective equipment and trained in proper methods for cleanup and decontamination.

(d) Formaldehyde-contaminated waste and debris resulting from leaks or spills shall be placed for disposal in sealed containers bearing a label warning of formaldehyde's presence and of the hazards associated with formaldehyde.

(11) Emergencies. For each workplace where there is the possibility of an emergency involving formaldehyde, the employer shall assure appropriate procedures are adopted to minimize injury and loss of life. Appropriate procedures shall be implemented in the event of an emergency.

(12) Medical surveillance.

(a) Employees covered.

(i) The employer shall institute medical surveillance programs for all employees exposed to formaldehyde at concentrations at or exceeding the action level or exceeding the STEL.

(ii) The employer shall make medical surveillance available for employees who develop signs and symptoms of overexposure to formaldehyde and for all employees exposed to formaldehyde in emergencies. When determining whether an employee may be experiencing signs and symptoms of possible overexposure to formaldehyde, the employer may rely on the evidence that signs and symptoms associated with formaldehyde exposure will occur only in exceptional circumstances when airborne exposure is less than 0.1 ppm and when formaldehyde is present in materials in concentrations less than 0.1 percent.

(b) Examination by a physician. All medical procedures, including administration of medical disease questionnaires, shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(c) Medical disease questionnaire. The employer shall make the following medical surveillance available to employees prior to assignment to a job where formaldehyde exposure is at or above the action level or above the STEL and annually thereafter. The employer shall also make the following medical surveillance available promptly upon determining that an employee is experiencing signs and symptoms indicative of possible overexposure to formaldehyde.

(i) Administration of a medical disease questionnaire, such as in Appendix D, which is designed to elicit information on work history, smoking history, any evidence of eye, nose, or throat irritation; chronic airway problems or hyperreactive airway disease; allergic skin conditions or dermatitis; and upper or lower respiratory problems.

(ii) A determination by the physician, based on evaluation of the medical disease questionnaire, of whether a medi-

cal examination is necessary for employees not required to wear respirators to reduce exposure to formaldehyde.

(d) Medical examinations. Medical examinations shall be given to any employee who the physician feels, based on information in the medical disease questionnaire, may be at increased risk from exposure to formaldehyde and at the time of initial assignment and at least annually thereafter to all employees required to wear a respirator to reduce exposure to formaldehyde. The medical examination shall include:

(i) A physical examination with emphasis on evidence of irritation or sensitization of the skin and respiratory system, shortness of breath, or irritation of the eyes.

(ii) Laboratory examinations for respirator wearers consisting of baseline and annual pulmonary function tests. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEV1), and forced expiratory flow (FEF).

(iii) Any other test which the examining physician deems necessary to complete the written opinion.

(iv) Counseling of employees having medical conditions that would be directly or indirectly aggravated by exposure to formaldehyde on the increased risk of impairment of their health.

(e) Examinations for employees exposed in an emergency. The employer shall make medical examinations available as soon as possible to all employees who have been exposed to formaldehyde in an emergency.

(i) The examination shall include a medical and work history with emphasis on any evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation.

(ii) Other examinations shall consist of those elements considered appropriate by the examining physician.

(f) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices A, C, D, and E;

(ii) A description of the affected employee's job duties as they relate to the employee's exposure to formaldehyde;

(iii) The representative exposure level for the employee's job assignment;

(iv) Information concerning any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(vi) In the event of a nonroutine examination because of an emergency, the employer shall provide to the physician as soon as possible: A description of how the emergency occurred and the exposure the victim may have received.

(g) Physician's written opinion.

(i) For each examination required under this standard, the employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to formaldehyde. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to formaldehyde;

(B) Any recommended limitations on the employee's exposure or changes in the use of personal protective equipment, including respirators;

(C) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to formaldehyde, whether these conditions may have resulted from past formaldehyde exposure or from exposure in an emergency, and whether there is a need for further examination or treatment.

(ii) The employer shall provide for retention of the results of the medical examination and tests conducted by the physician.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within fifteen days of its receipt.

(h) Medical removal.

(i) The provisions of this subdivision apply when an employee reports significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluated by a physician selected by the employer pursuant to (c) of this subsection. If the physician determines that a medical examination is not necessary under (c)(ii) of this subsection, there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the signs or symptoms subside untreated or with the use of creams, gloves, first-aid treatment, or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also be implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority, and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall be examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formaldehyde when products to which the affected employee is exposed contain less than 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of (e)(i) and (ii) of this subsection. Additional guidelines for conducting medical exams are contained in WAC 296-62-07546, Appendix C.

(v) If the physician finds that significant irritation of the mucosa of the eyes or the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal. The employer shall promptly comply with the restrictions or recommendations of removal. In the event of a recommendation of removal, the employer shall remove

the affected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to item (v) of this subdivision, the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to six months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority, and other benefits until such work becomes available, until the employee is determined to be unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this subsection. This examination shall determine if the employee can return to the original job status, or if the removal is to be permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can be returned to the original job status, or if the removal is to be permanent.

(viii) An employer's obligation to provide earnings, seniority, and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this subsection the employer may rely on objective data.

(i) Multiple physician review.

(i) After the employer selects the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determinations, or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informs the employer of the intention to seek a second medical opinion; and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(13) Hazard communication.

(a) General. Notwithstanding any exemption granted in WAC 296-800-170 for wood products, each employer who has a workplace covered by this standard shall comply with the requirements of WAC 296-800-170. The definitions of the chemical hazard communication standard shall apply under this standard.

(i) The following shall be subject to the hazard communication requirements of this section: Formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under reasonably foreseeable concentrations reaching or exceeding 0.1 ppm.

(ii) As a minimum, specific health hazards that the employer shall address are: Cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(b) Manufacturers and importers who produce or import formaldehyde or formaldehyde-containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs as required by chapter 296-839 WAC.

(c) Labels.

(i) The employer shall assure that hazard warning labels complying with the requirements of WAC 296-800-170 are affixed to all containers of materials listed in (a)(i) of this subsection, except to the extent that (a)(i) of this subsection is inconsistent with this item.

(ii) Information on labels. As a minimum, for all materials listed in (a)(i) of this subsection, capable of releasing formaldehyde at levels of 0.1 ppm to 0.5 ppm, labels shall identify that the product contains formaldehyde: List the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(iii) For materials listed in (a)(i) of this subsection, capable of releasing formaldehyde at levels above 0.5 ppm, labels shall appropriately address all the hazards as defined in WAC 296-800-170, and Appendices A and B, including respiratory sensitization, and shall contain the words "Potential Cancer Hazard."

(iv) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(v) Substitute warning labels. The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this subitem.

(d) Material safety data sheets.

(i) Any employer who uses formaldehyde-containing materials listed in (a)(i) of this subsection shall comply with the requirements of WAC 296-800-170 with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde containing materials listed in (a)(i) of this subsection shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

(e) Written hazard communication program. The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at a minimum describes how the requirements specified in this section for labels and other forms of warning and material safety data sheets, and subsection (14) of this section for employee information and training, will be met. Employees in multiemployer workplaces shall comply with the requirements of WAC 296-800-170.

(14) Employee information and training.

(a) Participation. The employer shall assure that all employees who are assigned to workplaces where there is a health hazard from formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(b) Frequency. Employers shall provide such information and training to employees at the time of their initial assignment and whenever a new exposure to formaldehyde is introduced into their work area. The training shall be repeated at least annually.

(c) Training program. The training program shall be conducted in a manner which the employee is able to understand and shall include:

(i) A discussion of the contents of this regulation and the contents of the material safety data sheet;

(ii) The purpose for and a description of the medical surveillance program required by this standard, including:

(A) A description of the potential health hazards associated with exposure to formaldehyde and a description of the signs and symptoms of exposure to formaldehyde.

(B) Instructions to immediately report to the employer the development of any adverse signs or symptoms that the employee suspects is attributable to formaldehyde exposure.

(iii) Description of operations in the work area where formaldehyde is present and an explanation of the safe work practices appropriate for limiting exposure to formaldehyde in each job;

(iv) The purpose for, proper use of, and limitations of personal protective clothing;

(v) Instructions for the handling of spills, emergencies, and clean-up procedures;

(vi) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls;

(vii) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency; and

(viii) The purpose, proper use, limitations, and other training requirements for respiratory protection as required by chapter 296-842 WAC.

(d) Access to training materials.

(i) The employer shall inform all affected employees of the location of written training materials and shall make these materials readily available, without cost, to the affected employees.

(ii) The employer shall provide, upon request, all training materials relating to the employee training program to the director of labor and industries, or his/her designated representative.

(15) Recordkeeping.

(a) Exposure measurements. The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to formaldehyde. This record shall include:

(i) The date of measurement;

(ii) The operation being monitored;

(iii) The methods of sampling and analysis and evidence of their accuracy and precision;

(iv) The number, durations, time, and results of samples taken;

(v) The types of protective devices worn; and

(vi) The names, job classifications, Social Security numbers, and exposure estimates of the employees whose exposures are represented by the actual monitoring results.

(b) Exposure determinations. Where the employer has determined that no monitoring is required under this standard, the employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to formaldehyde at or above the action level.

(c) Medical surveillance. The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under this standard. This record shall include:

(i) The name and Social Security number of the employee;

(ii) The physician's written opinion;

(iii) A list of any employee health complaints that may be related to exposure to formaldehyde; and

(iv) A copy of the medical examination results, including medical disease questionnaires and results of any medical tests required by the standard or mandated by the examining physician.

(d) Record retention. The employer shall retain records required by this standard for at least the following periods:

(i) Exposure records and determinations shall be kept for at least thirty years; and

(ii) Medical records shall be kept for the duration of employment plus thirty years.

(e) Availability of records.

(i) Upon request, the employer shall make all records maintained as a requirement of this standard available for examination and copying to the director of labor and industries, or his/her designated representative.

(ii) The employer shall make employee exposure records, including estimates made from representative monitoring and available upon request for examination and copying, to the subject employee, or former employee, and employee representatives in accordance with chapter 296-802 WAC.

(iii) Employee medical records required by this standard shall be provided upon request for examination and copying, to the subject employee, or former employee, or to anyone having the specific written consent of the subject employee or former employee in accordance with chapter 296-802 WAC.

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

WAC 296-155-160 Gases, vapors, fumes, dusts, and mists. (1) Exposure of employees to inhalation, ingestion, skin absorption, or contact with any material or substance at a concentration above those specified in the general occupational health standards, WAC 296-62-07515 shall be avoided.

(2) To achieve compliance with subsection (1) of this section, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in WAC 296-62-07515. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with WAC 296-155-220.

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

(4) Whenever any employee is exposed to asbestos, the provisions of the general occupational health standards, chapter 296-62 WAC shall apply.

(5) Subsections (1) and (2) of this section do not apply to the exposure of employees to formaldehyde. Whenever any employee is exposed to formaldehyde, the requirements of chapter 296-856 WAC ((~~296-62-07540~~)) shall apply.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-56045 Label containers of hazardous chemicals.

Exemption: Containers are exempt from this section if **ALL** hazardous contents are listed in Table 11.

You must:

• Make sure every container of hazardous chemicals leaving the workplace is properly labeled. This includes **ALL** of the following:

– The identity of the hazardous chemical (the chemical or common name) that matches the identity used on the MSDS

– An appropriate hazard warning

– The name and address of the chemical manufacturer, importer, or other responsible party

– Make sure labeling does not conflict with the requirements of:

• The Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.)

AND

• Regulations issued under the act by the U.S. Department of Transportation (Title 49 of the Code of Federal Regulations, Parts 171 through 180). See http://www.dot.gov

– Revise labels within three months of becoming aware of new and significant information about chemical hazards

– Provide revised labels on containers beginning with the first shipment after a revision, to manufacturers, distributors or employers

– Revise the label when a chemical is not currently used, produced or imported, before:

• You resume shipping (or transferring) the chemical

OR

• The chemical is reintroduced in the workplace

– Label information

• Clearly written in English

AND

• Prominently displayed on the container.

Reference: Additional labeling requirements for specific hazardous chemicals (for example, asbestos((~~, cadmium, and formaldehyde~~)) and cadmium) are found in chapter 296-62 WAC, General occupational health standards (see parts F, G, ((~~I~~)) and I-1 of that chapter).

Note: When the conditions specified in Table 10 are met for the solid material products listed, you are not required to provide labels for every shipment.

Table 10 Labeling for Solid Materials	
You need only send labels with the first shipment, IF the product is	**And**
Whole grain	• It is shipped to the same customer **AND** • No hazardous chemicals are part of or known to be present with the product which could expose employees during handling – For example, cutting fluids on solid metal, and pesticides with grain
Solid untreated wood	
Solid metal For example: Steel beams, metal castings	
Plastic items	

Exemptions: The chemicals (and items) listed in Table 11 are **EXEMPT** from **THIS SECTION** under the conditions specified. Requirements in other sections still apply.

Table 11 Conditional Label Exemptions	
This section does not apply to	**When the product is**
• Pesticides – Meeting the definition of "pesticides" in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (see Title 7, U.S.C. Chapter 6, Subchapter II, section 136[1])	• Subject to – Labeling requirements of FIFRA[1] **AND** – Labeling regulations issued under FIFRA by the United States Environmental Protection Agency (EPA) (see Title 40 of the Code of Federal Regulations[2])
• A chemical substance or mixture – Meeting the definition of "chemical substance" or "mixture" in the Toxic Substance Control Act (TSCA) (see Title 15 U.S.C. Chapter 53, Subchapter II, Section 2602[1])	• Subject to – Labeling requirements of TSCA[1] **AND** – Labeling requirements issued under TSCA by the EPA (see Title 40 of the Code of Federal Regulations[2])

Table 11 Conditional Label Exemptions	
This section does not apply to	**When the product is**
• Each of the following – Food – Food additives – Color additives – Drugs – Cosmetics – Medical devices or products – Veterinary devices or products – Materials intended for use in these products (for example: Flavors, and fragrances) • As defined in – The Federal Food, Drug, and Cosmetic Act (see Title 21 U.S.C. Chapter 9, Subchapter II, Section 321[1]) **OR** – The Virus-Serum Toxin Act of 1913 (see Title 21 U.S.C. Chapter 5, Section 151 et seq.[1]) **OR** – Regulations issued under these acts (see Title 21 Part 101 in the Code of Federal Regulations, and Title 9, in the Code of Federal Regulations[3])	• Subject to: – Labeling requirements in Federal Food, Drug, and Cosmetic Act, Virus-Serum Toxin Act of 1913, and issued regulations enforced by the United States Food and Drug Administration (see Title 21 Parts 101-180 in the Code of Federal Regulations[3]) **OR** – Department of Agriculture (see Title 9, in the Code of Federal Regulations[3])
• Each of the following: – Distilled spirits (beverage alcohols) **AND**	• Subject to: – Labeling requirements of Federal Alcohol Administration Act[1] **AND**

Table 11 Conditional Label Exemptions	
This section does not apply to	**When the product is**
– Wine **AND** – Malt beverage • As defined in – The Federal Alcohol Administration Act (see Title 27 U.S.C. Section 201[1]) **AND** – Regulations issued under this act (see Title 27 in the Code of Federal Regulations[3])	– Labeling regulations issued under Federal Alcohol Administration Act by the Bureau of Alcohol, Tobacco, and Firearms (see Title 27 in the Code of Federal Regulations[3])
• Consumer products **AND** • Hazardous substances – As defined in the Consumer Product Safety Act (see 15 U.S.C. 2051 et seq.[1]) **AND** – The Federal Hazardous Substances Act (see 15 U.S.C. 1261 et seq.[1])	• Subject to: – A consumer product safety or labeling requirement of the Consumer Product Safety Act or Federal Hazardous Substances Act[1] **OR** – Regulations issued under these acts by the Consumer Product Safety Commission (see Title 16 in the Code of Federal Regulations[3])
• Agricultural seed **AND**	• Labeled as required by
• Vegetable seed treated with pesticides	– The Federal Seed Act (see Title 7 U.S.C. Chapter 37 Section 1551 et seq.[1]) **AND** – Labeling requirements issued under Federal Seed Act by the United States Department of Agriculture[1]

[1]This federal act is included in the United States Code. See http://www.access.gpo.gov/uscode/uscmain.html.

[2]See http://www.epa.gov.

[3]See http://www.access.gpo.gov/nara/cfr/index.html.

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-624 Scope.

This part applies **only** if your employees:

• Are exposed to a respiratory hazard

OR

• Could be exposed to one of the specific hazards listed below.

This part applies to any workplace with potential or actual employee exposure to respiratory hazards. It requires you to protect employees from respiratory hazards by applying this protection strategy:

• Evaluate employee exposures to determine if controls are needed

• Use feasible controls. For example, enclose or confine the operation, use ventilation systems, or substitute with less toxic material

• Use respirators if controls are not feasible or if they cannot completely remove the hazard.

Definition:

Exposed or exposure:

The contact an employee has with a toxic substance, harmful physical agent or oxygen deficient condition, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

Note: Examples of substances that may be respiratory hazards when airborne include:

• Chemicals listed in Table 3

• Any substance

– Listed in the latest edition of the NIOSH Registry of Toxic Effects of Chemical Substances

– For which positive evidence of an acute or chronic health hazard exists through tests conducted by, or known to, the employer

– That may pose a hazard to human health as stated on a material safety data sheet kept by, or known to, the employer
• Atmospheres considered oxygen deficient
• Biological agents such as harmful bacteria, viruses or fungi
– Examples include airborne TB aerosols and anthrax
• Pesticides with a label requirement for respirator use
• Chemicals used as crowd control agents such as pepper spray
• Chemicals present at clandestine drug labs.
These substances can be airborne as dusts, fibers, fogs, fumes, mists, gases, smoke, sprays, vapors, or aerosols.

Reference:
• Substances in Table 3 that are marked with an X in the "skin" column may require personal protective equipment (PPE). See WAC 296-307-100, Personal protective equipment, for additional information and requirements.
• If any of the following hazards are present in your workplace, you will need both this part and any of the following specific rules that apply:

Hazard	Rule that applies
Acrylonitrile	WAC 296-62-07336
Arsenic (inorganic)	WAC 296-62-07347
Asbestos	WAC 296-62-077
Benzene	WAC 296-62-07523
Butadiene	WAC 296-62-07460
Cadmium	WAC 296-62-074 through 296-62-07449 or 296-155-174
Carcinogens	Chapter 296-62 WAC, Part F
Coke ovens	Chapter 296-62 WAC, Part O
Cotton dust	Chapter 296-62 WAC, Part N
1,2-Dibromo-3-chloropropane	WAC 296-62-07342
Ethylene oxide	WAC 296-62-07355
Formaldehyde	Chapter 296-856 WAC ((~~296-62-07540~~))
Lead	WAC 296-62-07521 or 296-155-176
Methylene chloride	WAC 296-62-07470
Methylenedianiline	WAC 296-62-076 or 296-155-173
Thiram	WAC 296-62-07519
Vinyl chloride	WAC 296-62-07329

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-62625 Permissible exposure limits of air contaminants.

IMPORTANT:

The following information applies to Table 3, Permissible Exposure Limits for Air Contaminants.

• Exposure needs to be determined from personal air samples taken in the breathing zone or from monitoring representative of the employee's breathing zone.

• Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.

• Mg/m^3 refers to milligrams of substance per cubic meter of air.

• For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the web site: http://www.cas.org.

• Time weighted averages (TWA_8) represent the maximum allowed average exposure for any 8-hour time period. For work periods longer than 8 hours the TWA_8 needs to be determined using the 8 continuous hours with the highest average concentration.

• Short-term exposure limits (STEL) represent maximum allowed average exposure for any fifteen-minute period, unless another time period is noted in Table 3.

• The ceiling represents the maximum allowed exposure for the shortest time period that can feasibly be measured.

• An "X" in the "skin" column indicates the substance can be absorbed through the skin, either by airborne or direct contact.

• Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-307-100.

• The respirable fraction of particulate is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Acetaldehyde	75-07-0	100 ppm	150 ppm	——	——
Acetic acid	64-19-7	10 ppm	20 ppm	——	——
Acetic anhydride	108-24-7	——	——	5 ppm	——
Acetone	67-64-1	750 ppm	1,000 ppm	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Acetonitrile	75-05-8	40 ppm	60 ppm	——	——
2-Acetylaminofluorene (see WAC 296-62-073)	53-96-3	——	——	——	——
Acetylene	74-86-2	Simple asphyxiant	——	——	——
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	——	——
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	——	——
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m^3	10 mg/m^3	——	——
Acrolein	107-02-8	0.1 ppm	0.3 ppm	——	——
Acrylamide	79-06-1	0.03 mg/m^3	0.09 mg/m^3	——	X
Acrylic acid	79-10-7	10 ppm	20 ppm	——	X
Acrylonitrile (Vinyl cyanide) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	——	——
Aldrin	309-00-2	0.25 mg/m^3	0.75 mg/m^3	——	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	——	X
Allyl chloride	107-05-1	1 ppm	2 ppm	——	——
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	——	——
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	——	——
alpha-Alumina (Aluminum oxide)	1344-28-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Aluminum (as Al)	7429-90-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Pyro powders	——	5 mg/m^3	10 mg/m^3	——	——
Welding fumes	——	5 mg/m^3	10 mg/m^3	——	——
Soluble salts	——	2 mg/m^3	4 mg/m^3	——	——
Alkyls (NOC)	——	2 mg/m^3	4 mg/m^3	——	——
Aluminum oxide (Alundum, Corundum)	7429-90-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
4-Aminodiphenyl (see WAC 296-62-073)	92-67-1	——	——	——	——
2-Aminoethanol (Ethanolamine)	141-43-5	3 ppm	6 ppm	——	——
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	——	——
Amitrole	61-82-5	0.2 mg/m^3	0.6 mg/m^3	——	——
Ammonia	7664-41-7	25 ppm	35 ppm	——	——
Ammonium chloride, fume	12125-02-9	10 mg/m^3	20 mg/m^3	——	——
Ammonium sulfamate (Ammate)	7773-06-0	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5.0 mg/m^3	10 mg/m^3	——	——
n-Amyl acetate	628-63-7	100 ppm	150 ppm	——	——
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	——	——
Aniline and homologues	62-53-3	2 ppm	4 ppm	——	X
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	——	X
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m^3	1.5 mg/m^3	——	——
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m^3	0.9 mg/m^3	——	——
Argon	7440-37-1	Simple asphyxiant	——	——	——
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m^3	0.6 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Arsenic, inorganic compounds (as As) (when use is covered by WAC 296-62-07347)	7440-38-2	0.01 mg/m^3	——	——	——
Arsenic, inorganic compounds (as As) (when use is not covered by WAC 296-62-07347)	7440-38-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Arsine	7784-42-1	0.05 ppm	0.15 ppm	——	——
Asbestos (see WAC 296-62-077)	——	——	——	——	——
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m^3	10 mg/m^3	——	——
Atrazine	1912-24-9	5 mg/m^3	10 mg/m^3	——	——
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m^3	0.6 mg/m^3	——	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m^3	0.75 mg/m^3	——	——
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m^3	1.5 mg/m^3	——	——
Barium sulfate	7727-43-7	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Baygon (Propoxur)	114-26-1	0.5 mg/m^3	1.5 mg/m^3	——	——
Benomyl	17804-35-2	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Benzene (see WAC 296-62-07523)	71-43-2	1 ppm	5 ppm	——	——
Benzidine (see WAC 296-62-073)	92-87-5	——	——	——	——
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	——	——
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Benzoyl peroxide	94-36-0	5 mg/m^3	10 mg/m^3	——	——
Benzyl chloride	100-44-7	1ppm	3 ppm	——	——
Beryllium and beryllium compounds (as Be)	7440-41-7	0.002 mg/m^3	0.005 mg/m^3 (30 min.)	0.025 mg/m^3	——
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	——	——
Bismuth telluride, undoped	1304-82-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Bismuth telluride, Se-doped	——	5 mg/m^3	10 mg/m^3	——	——
Borates, tetra, sodium salts	——	——	——	——	——
Anhydrous	1330-43-4	1 mg/m^3	3 mg/m^3	——	——
Decahydrate	1303-96-4	5 mg/m^3	10 mg/m^3	——	——
Pentahydrate	12179-04-3	1 mg/m^3	3 mg/m^3	——	——
Boron oxide	1303-86-2	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Boron tribromide	10294-33-4	——	——	1 ppm	——
Boron trifluoride	6737-07-2	——	——	1 ppm	——
Bromacil	314-40-9	1 ppm	3 ppm	——	——
Bromine	7726-95-6	0.1 ppm	0.3 ppm	——	——
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	——	——
Bromochloromethane (Chlorobromomthane)	74-97-5	200 ppm	250 ppm	——	——
Bromoform	15-25-2	0.5 ppm	1.5 ppm	——	X
Butadiene (1,3-butadiene)	106-99-0	1 ppm	5 ppm	——	——
Butane	106-97-8	800 ppm	1,000 ppm	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	——	——
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	——	——
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	——	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	——	——
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	——	——
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	——	——
Butyl acrylate	141-32-2	10 ppm	20 ppm	——	——
n-Butyl alcohol	71-36-3	——	——	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	——	——
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	——	——
Butylamine	109-73-9	——	——	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	——	——
tert-Butyl chromate (as CrOs)	1189-85-1	——	——	0.1 mg/m^3	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	——	——
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—-	——
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	——	——
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	——	X
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	——	——
Cadmium oxide fume (as Cd) (see WAC 296-62-074)	1306-19-0	0.005 mg/m^3	——	——	——
Cadmium dust and salts (as Cd) (see WAC 296-62-074)	7440-43-9	0.005 mg/m^3	——	——	——
Calcium arsenate (see WAC 296-62-07347)	——	0.01 mg/m^3	——	——	——
Calcium carbonate	1317-65-3	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Calcium cyanamide	156-62-7	0.5 mg/m^3	1.5 mg/m^3	——	——
Calcium hydroxide	1305-62-0	5 mg/m^3	10 mg/m^3	——	——
Calcium oxide	1305-78-8	2 mg/m^3	4 mg/m^3	——	——
Calcium silicate	1344-95-2	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Calcium sulfate	7778-18-9	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Camphor (synthetic)	76-22-2	2 mg/m^3	4 mg/m^3	——	——
Caprolactam	105-60-2	——	——	——	——
Dust	——	1 mg/m^3	3 mg/m^3	——	——
Vapor	——	5 ppm	10 ppm	——	——
Captafol (Difolatan)	2425-06-1	0.1 mg/m^3	0.3 mg/m^3	——	X
Captan	133-06-2	5 mg/m^3	10 mg/m^3	——	——
Carbaryl (Sevin)	63-25-2	5 mg/m^3	10 mg/m^3	——	——
Carbofuran (Furadon)	1563-66-2	0.1 mg/m^3	0.3 mg/m^3	——	——
Carbon black	1333-86-4	3.5 mg/m^3	7 mg/m^3	——	——
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	——	——
Carbon disulfide	75-15-0	4 ppm	12 ppm	——	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	——
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	——	——
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	——	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	——	——
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	——	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	——	X
Cellulose (paper fiber)	9004-34-6	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Cesium hydroxide	21351-79-1	2 mg/m^3	4 mg/m^3	——	——
Chlordane	57-74-9	0.5 mg/m^3	1.5 mg/m^3	——	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m^3	1 mg/m^3	——	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m^3	1.5 mg/m^3	——	——
Chlorine	7782-50-5	0.5 ppm	——	1 ppm	——
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	——	——
Chlorine trifluoride	7790-91-2	——	——	0.1 ppm	——
Chloroacetaldehyde	107-20-0	——	——	1 ppm	——
a-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	——	——
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	——	——
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	——	——
o-Chlorobenzylidene malononitrile (OCBM)	2698-41-1	——	——	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	——	——
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	——	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	——	——
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m^3	3 mg/m^3	——	X
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m^3	1.5 mg/m^3	——	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	——	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	——	——	1 ppm	X
Chloroethylene (vinyl chloride) (See WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	——	——
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	——	——
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	——	——
bis-Chloromethyl ether (see WAC 296-62-073)	542-88-1	——	——	——	——
Chloromethyl methyl ether (Methyl chloromethyl ether) (see WAC 296-62-073)	107-30-2	——	——	——	——
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	——	——
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	——	——
beta-Chloroprene (2-Chloro-1, 3-butadiene)	126-99-8	10 ppm	20 ppm	——	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	——	——
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	——	——
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Chlorpyrifos	2921-88-2	0.2 mg/m^3	0.6 mg/m^3	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Chromic acid and chromates (as CrO3)	Varies with compound	0.1 mg/m^3	0.3 mg/m^3	——	——
Chromium, soluble, chromic and chromous salts (as Cr)	7440-47-3	0.5 mg/m^3	1.5 mg/m^3	——	——
Chromium (VI) compounds (as Cr)	——	0.05 mg/m^3	0.15 mg/m^3	——	——
Chromium metal and insoluble salts	7440-47-3	0.5 mg/m^3	1.5 mg/m^3	——	——
Chromyl chloride	14977-61-8	0.025 ppm	0.075 ppm	——	——
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Clopidol	2971-90-6	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Coal dust (less than 5% SiO2)	——	——	——	——	——
Respirable fraction	——	2 mg/m^3	4 mg/m^3	——	——
Coal dust (greater than or equal to 5% SiO2)	——	——	——	——	——
Respirable fraction	——	0.1 mg/m^3	0.3 mg/m^3	——	——
Coal tar pitch volatiles (benzene soluble fraction) (Particulate polycyclic aromatic hydrocarbons)	65996-93-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m^3	0.15 mg/m^3	——	——
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m^3	0.3 mg/m^3	——	——
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m^3	0.3 mg/m^3	——	——
Coke oven emissions (see WAC 296-62-200)	——	0.15 mg/m^3	——	——	——
Copper (as Cu)	7440-50-8	——	——	——	——
Fume	——	0.1 mg/m^3	0.3 mg/m^3	——	——
Dusts and mists	——	1 mg/m^3	3 mg/m^3	——	——
Cotton dust (raw) (waste sorting, blending, cleaning, willowing and garetting) (see WAC 296-62-14533)	——	1 mg/m^3	——	——	——
Corundum (Aluminum oxide)	7429-90-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Crag herbicide (Sesone, Sodium-2, 4-dichloro-phenoxyethyl sulfate)	136-78-7	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	——	X
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	——	——
Crufomate	299-86-5	5 mg/m^3	10 mg/m^3	——	——
Cumene	98-82-8	50 ppm	75 ppm	——	X
Cyanamide	420-04-2	2 mg/m^3	4 mg/m^3	——	——
Cyanide (as CN)	Varies with compound	5 mg/m^3	10 mg/m^3	——	X
Cyanogen	460-19-5	10 ppm	20 ppm	——	——
Cyanogen chloride	506-77-4	——	——	0.3 ppm	——
Cyclohexane	110-82-7	300 ppm	375 ppm	——	——
Cyclohexanol	108-93-0	50 ppm	75 ppm	——	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	——	X
Cyclohexene	110-83-8	300 ppm	375 ppm	——	——
Cyclohexylamine	108-91-8	10 ppm	20 ppm	——	——
Cyclonite (RDX)	121-82-4	1.5 mg/m^3	3.0 mg/m^3	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Cyclopentadiene	542-92-7	75 ppm	113 ppm	——	——
Cyclopentane	287-92-3	600 ppm	750 ppm	——	——
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m^3	10 mg/m^3	——	——
2,4-D (Dichlorophenoxy-acetic acid)	94-75-7	10 mg/m^3	20 mg/m^3	——	——
DBCP (1,2-Dibromo-3-chloropropane) (See WAC 296-62-07342)	96-12-8	0.001 ppm	——	0.005 ppm	——
DDT (Dichlorodiphenyltri-chloroethane)	50-29-3	1 mg/m^3	3 mg/m^3	——	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	——	X
Dasanit (Fensulfothion)	115-90-2	0.1 mg/m^3	0.3 mg/m^3	——	——
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	——	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	——	X
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	123-42-2	50 ppm	75 ppm	——	——
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	——	——
Diazinon	333-41-5	0.1 mg/m^3	0.3 mg/m^3	——	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	——	——
Diborane	19287-45-7	0.1 ppm	0.3 ppm	——	——
Dibrom (see Naled)	300-76-5	3 mg/m^3	6 mg/m^3	——	X
1, 2-Dibromo-3-chloropropane (DBCP) (see WAC 296-62-07342)	96-12-8	0.001 ppm	——	0.005 ppm	——
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	——	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	——	——
Dibutyl phthalate	84-74-2	5 mg/m^3	10 mg/m^3	——	——
Dichloroacetylene	7572-29-4	——	——-	0.1 ppm	——
o-Dichlorobenzene	95-50-1	——	——	50 ppm	——
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	——	——
3, 3'-Dichlorobenzidine (see WAC 296-62-073)	91-94-1	——	——	——	——
Dichlorodiphenyltri-chloroethane (DDT)	50-29-3	1 mg/m^3	3 mg/m^3	——	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	——	——
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m^3	0.4 mg/m^3	——	——
1, 1-Dichloroethane (Ethylidine chloride)	75-34-3	100 ppm	150 ppm	——	——
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	——	——
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	——	——
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	——	——
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	——	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	——	——
Dichloromethane (Methylene chloride) (See WAC 296-62-07470)	75-09-2	25 ppm	125 ppm	——	——
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	——	——
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m^3	20 mg/m^3	——	——
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	——	——
Dichloropropene	542-75-6	1 ppm	3 ppm	——	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	——	——
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	——	——
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Dicrotophos	141-66-2	0.25 mg/m^3	0.75 mg/m^3	——	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	——	——
Dicyclopentadienyl iron	102-54-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Dieldrin	60-57-1	0.25 mg/m^3	0.75 mg/m^3	——	X
Diethanolamine	111-42-2	3 ppm	6 ppm	——	——
Diethylamine	109-89-7	10 ppm	25 ppm	——	——
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	——	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	——	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	——	——
Diethyl ketone	96-22-0	200 ppm	250 ppm	——	——
Diethyl phthalate	84-66-2	5 mg/m^3	10 mg/m^3	——	——
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	——	——
Difolatan (Captafol)	2425-06-1	0.1 mg/m^3	0.3 mg/m^3	——	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	——	——
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m^3	4 mg/m^3	——	——
Diisobutyl ketone (2, 6-Dimethylheptanone)	108-83-8	25 ppm	38 ppm	——	——
Diisopropylamine	108-18-9	5 ppm	10 ppm	——	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	——	——
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	——	X
Dimethylamine	124-40-3	10 ppm	20 ppm	——	——
4-Dimethylaminoazo benzene (see WAC 296-62-073)	60-11-7	——	——	——	——
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	——	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	——	X
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	——	——
Dimethyl-1, 2-dibromo-2, 2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m^3	6 mg/m^3	——	X
Dimethylformamide	68-12-2	10 ppm	20 ppm	——	X
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	——	——
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	——	X
Dimethyl phthalate	131-11-3	5 mg/m^3	10 mg/m^3	——	——
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	——	X
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m^3	10 mg/m^3	——	——
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0; 100-25-4	0.15 ppm	0.45 ppm	——	X
Dinitro-o-cresol	534-52-1	0.2 mg/m^3	0.6 mg/m^3	——	X
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m^3	10 mg/m^3	——	——
Dinitrotoluene	25321-14-6	1.5 mg/m^3	3 mg/m^3	——	X
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	——	X
Dioxathion	78-34-2	0.2 mg/m^3	0.6 mg/m^3	——	X
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	——	——
Diphenylamine	122-39-4	10 mg/m^3	20 mg/m^3	——	——
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	——	——	0.02 ppm	——
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Dipropyl ketone	123-19-3	50 ppm	75 ppm	——	——
Diquat	85-00-7	0.5 mg/m^3	1.5 mg/m^3	——	——
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m^3	10 mg/m^3	——	——
Disulfram	97-77-8	2 mg/m^3	4 mg/m^3	——	——
Disulfoton	298-04-4	0.1 mg/m^3	0.3 mg/m^3	——	X
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m^3	20 mg/m^3	——	——
Diuron	330-54-1	10 mg/m^3	20 mg/m^3	——	——
Divinyl benzene	1321-74-0	10 ppm	20 ppm	——	——
Emery	12415-34-8	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Endosulfan (Thiodan)	115-29-7	0.1 mg/m^3	0.3 mg/m^3	——	X
Endrin	72-20-8	0.1 mg/m^3	0.3 mg/m^3	——	X
Epichlorhydrin (1-Chloro-2, 3-epoxypropane)	106-89-8	2 ppm	4 ppm	——	X
EPN	2104-64-5	0.5 mg/m^3	1.5 mg/m^3	——	X
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	——	——
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	——	——
Ethane	——	Simple asphyxiant	——	——	——
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	——	——
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	——	——
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	——	——
Ethion	563-12-2	0.4 mg/m^3	1.2 mg/m^3	——	X
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	——	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	——	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	——	——
Ethyl acrylate	140-88-5	5 ppm	25 ppm	——	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	——	——
Ethylamine	75-04-07	10 ppm	20 ppm	——	——
Ethyl amyl ketone (5-Methyl-3-hepatone)	541-85-5	25 ppm	38 ppm	——	——
Ethyl benzene	100-41-4	100 ppm	125 ppm	——	——
Ethyl bromide	74-96-4	200 ppm	250 ppm	——	——
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	——	——
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	——	——
Ethylene	74-85-1	Simple asphyxiant	——	——	——
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	——	——	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	——	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	——	——
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	——	——
Ethylene glycol	107-21-1	——	——	50 ppm	——
Ethylene glycol dinitrate	628-96-6	——	0.1 mg/m^3	——	X
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	——	5 ppm	10 ppm	——	X
Ethyleneimine (see WAC 296-62-073)	151-56-4	——	——	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Ethylene oxide (see WAC 296-62-07359)	75-21-8	1 ppm	5 ppm	——	——
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	——	——
Ethyl formate	109-94-4	100 ppm	125 ppm	——	——
Ethylidine chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	——	——
Ethylidene norbornene	16219-75-3	——	——	5.0 ppm	——
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	——	——
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	——	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	——	——
Ethyl silicate	78-10-4	10 ppm	20 ppm	——	——
Fenamiphos	22224-92-6	0.1 mg/m^3	0.3 mg/m^3	——	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m^3	0.3 mg/m^3	——	——
Fenthion	55-38-9	0.2 mg/m^3	0.6 mg/m^3	——	X
Ferbam	——	——	——	——	——
Total particulate	14484-64-1	10 mg/m^3	20 mg/m^3	——	——
Ferrovanadium dust	12604-58-9	1 mg/m^3	3 mg/m^3	——	——
Fluorides (as F)	Varies with compound	2.5 mg/m^3	5 mg/m^3	——	——
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	——	——
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	——	——	1,000 ppm	——
Fonofos	944-22-9	0.1 mg/m^3	0.3 mg/m^3	——	X
Formaldehyde (see chapter 296-856 WAC ((~~296-62-07540~~)))	50-00-0	0.75 ppm	2 ppm	——	——
Formamide	75-12-7	20 ppm	30 ppm	——	——
Formic acid	64-18-6	5 ppm	10 ppm	——	——
Furadon (carbofuran)	1563-66-2	0.1 mg/m^3	0.3 mg/m^3	——	——
Furfural	98-01-1	2 ppm	4 ppm	——	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	——	X
Gasoline	8006-61-9	300 ppm	500 ppm	——	——
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	——	——
Glass, fibrous or dust	——	10 mg/m^3	20 mg/m^3	——	——
Gluteraldehyde	111-30-8	——	——	0.2 ppm	——
Glycerin mist	56-81-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	——	——
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	——	X
Grain dust (oat, wheat, barley)	——	10 mg/m^3	20 mg/m^3	——	——
Graphite, natural	7782-42-5	——	——	——	——
Respirable particulate	——	2.5 mg/m^3	5 mg/m^3	——	——
Graphite, synthetic	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m^3	0.6 mg/m^3	——	X
Gypsum	13397-24-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Hafnium	7440-58-6	0.5 mg/m^3	1.5 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Helium	——	Simple asphyxiant	——	——	——
Heptachlor	76-44-8	0.5 mg/m^3	1.5 mg/m^3	——	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	——	——
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	——	——
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	——	——
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	——	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	——	——
Hexachloroethane	67-72-1	1 ppm	3 ppm	——	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m^3	0.6 mg/m^3	——	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	——	X
Hexane	——	——	——	——	——
n-hexane	110-54-3	50 ppm	75 ppm	——	——
other isomers	Varies with compound	500 ppm	1,000 ppm	——	——
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	——	——
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	——	——
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	——	——
Hexylene glycol	107-41-5	——	——	25 ppm	——
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	——	X
Hydrogen	——	Simple asphyxiant	——	——	——
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	——	——
Hydrogen bromide	10035-10-6	——	——	3.0 ppm	——
Hydrogen chloride	7647-01-0	——	——	5.0 ppm	——
Hydrogen cyanide	74-90-8	——	4.7 ppm	——	X
Hydrogen fluoride	7664-39-3	——	——	3 ppm	——
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	——	——
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	——	——
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	——	——
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m^3	4 mg/m^3	——	——
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	——	——
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	——	X
Indene	95-13-6	10 ppm	20 ppm	——	——
Indium and compounds (as In)	7440-74-6	0.1 mg/m^3	0.3 mg/m^3	——	——
Iodine	7553-56-2	——	——	0.1 ppm	——
Iodoform	75-47-8	0.6 ppm	1.8 ppm	——	——
Iron oxide dust and fume (as Fe)	1309-37-1	——	——	——	——
Total particulate	——	5 mg/m^3	10 mg/m^3	——	——
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	——	——
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m^3	3 mg/m^3	——	——
Isoamyl acetate	123-92-2	100 ppm	150 ppm	——	——
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	——	——
Isobutyl acetate	110-19-0	150 ppm	188 ppm	——	——
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	——	——
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	——	X
Isophorone	78-59-1	4 ppm	——	5 ppm	——
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	——	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	——	——
Isopropyl acetate	108-21-4	250 ppm	310 ppm	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	——	——
Isopropylamine	75-31-0	5 ppm	10 ppm	——	——
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	——	X
Isopropyl ether	108-20-3	250 ppm	313 ppm	——	——
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	——	——
Kaolin	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Ketene	463-51-4	0.5 mg/m^3	1.5 mg/m^3	——	——
Lannate (Methomyl)	16752-77-5	2.5 mg/m^3	5 mg/m^3	——	——
Lead, inorganic (as Pb) (see WAC 296-62-07521 and 296-155-176)	7439-92-1	0.05 mg/m^3	——	——	——
Lead arsenate (as Pb) (see WAC 296-62-07347)	3687-31-8	0.05 mg/m^3	——	——	——
Lead chromate (as Pb)	7758-97-6	0.05 mg/m^3	——	——	——
Limestone	1317-65-3	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Lindane	58-89-9	0.5 mg/m^3	1.5 mg/m^3	——	X
Lithium hydride	7580-67-8	0.025 mg/m^3	0.075 mg/m^3	——	——
L.P.G. (liquified petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	——	——
Magnesite	546-93-0	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Magnesium oxide fume	1309-48-4	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Malathion	121-75-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	——	——
Manganese and compounds (as Mn)	7439-96-5	——	——	5 mg/m^3	——
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m^3	0.3 mg/m^3	——	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m^3	3 mg/m^3	——	——
Marble	1317-65-3	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
MBOCA (4, 4'-Methylene bis (2-chloro-aniline)) (see WAC 296-62-073)	101-14-4	——	——	——	X
MDA (4, 4-Methylene dianiline) (see WAC 296-62-076)	101-77-9	0.01 ppm	0.1 ppm	——	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	——	——	0.02 ppm	——
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	——	——
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	——	——	0.2 ppm	——
Mercury (as Hg)	7439-97-6	——	——	——	——
Aryl and inorganic	——	0.1 mg/m^3	0.3 mg/m^3	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Organo-alkyl compounds	——	0.01 mg/m^3	0.03 mg/m^3	——	X
Vapor	——	0.05 mg/m^3	0.15 mg/m^3	——	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	——	——
Methacrylic acid	79-41-4	20 ppm	30 ppm	——	X
Methane	——	Simple asphyxiant	——	——	——
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	——	——
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	——	X
Methomyl (lannate)	16752-77-5	2.5 mg/m^3	5 mg/m^3	——	——
Methoxychlor	72-43-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	——	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	——	X
4-Methoxyphenol	150-76-5	5 mg/m^3	10 mg/m^3	——	——
Methyl acetate	79-20-9	200 ppm	250 ppm	——	——
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	——	——
Methyl acetylene-propadiene mixture (MAPP)	——	1,000 ppm	1,250 ppm	——	——
Methyl acrylate	96-33-3	10 ppm	20 ppm	——	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	——	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	——	——
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	——	X
Methylamine	74-89-5	10 ppm	20 ppm	——	——
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	——	X
Methyl n-amyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	——	——
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	——	X
Methyl bromide	74-83-9	5 ppm	10 ppm	——	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	——	——
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	——	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	——	X
Methyl chloride	74-87-3	50 ppm	100 ppm	——	——
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	——	——
Methyl chloromethyl ether (chloromethyl methyl ether) (see WAC 296-62-073)	107-30-2	——	——	——	——
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	——	——
Methylcyclohexane	108-87-2	400 ppm	500 ppm	——	——
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	——	——
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	——	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m^3	0.6 mg/m^3	——	X
Methyl demeton	8022-00-2	0.5 mg/m^3	1.5 mg/m^3	——	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyanate)	101-68-8	——	——	0.02 ppm	——
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA) (see WAC 296-62-073)	101-14-4	——	——	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	——	——	0.01 ppm	——
Methylene chloride (Dichloromethane) (see WAC 296-62-07470)	75-09-2	25 ppm	125 ppm	——	——
4, 4-Methylene dianiline (MDA) (see WAC 296-62-076)	101-77-9	0.01 ppm	0.1 ppm	——	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	——	——
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	——	——	0.2 ppm	——
Methyl formate	107-31-3	100 ppm	150 ppm	——	——
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	——	——
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	——	——	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	——	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	——	——
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	——	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	——	——
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	——	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	——	——
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	——	——
Methyl methacrylate	80-62-6	100 ppm	150 ppm	——	——
Methyl parathion	298-00-0	0.2 mg/m^3	0.6 mg/m^3	——	X
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	——	——
Methyl silicate	684-84-5	1 ppm	3 ppm	——	——
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	——	——
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	——	X
Metribuzin	21087-64-9	5 mg/m^3	10 mg/m^3	——	——
Mica (Silicates) Respirable fraction	12001-26-2	3 mg/m^3	6 mg/m^3	——	——
Molybdenum (as Mo)	7439-98-7	——	——	——	——
Soluble compounds	——	5 mg/m^3	10 mg/m^3	——	——
Insoluble compounds	——	10 mg/m^3	20 mg/m^3	——	——
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	——	——
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m^3	0.75 mg/m^3	——	——
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	——	X
Monomethyl hydrazine	——	——	——	0.2 ppm	——
Morpholine	110-91-8	20 ppm	30 ppm	——	X
Naled (Dibrom)	300-76-5	3 mg/m^3	6 mg/m^3	——	X
Naphtha	8030-30-6	100 ppm	150 ppm	——	X
Naphthalene	91-20-3	10 ppm	15 ppm	——	——
alpha-Naphthylamine (see WAC 296-62-073)	134-32-7	——	——	——	——
beta-Naphthylamine (see WAC 296-62-073)	91-59-8	——	——	——	——
Neon	7440-01-9	Simple asphyxiant	——	——	——
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	——	——
Nickel (as Ni)	7440-02-0	——	——	——	——
Metal and insoluble compounds	——	1 mg/m^3	3 mg/m^3	——	——
Soluble compounds	——	0.1 mg/m^3	0.3 mg/m^3	——	——
Nicotine	54-11-5	0.5 mg/m^3	1.5 mg/m^3	——	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Nitric acid	7697-37-2	2 ppm	4 ppm	——	——
Nitric oxide	10102-43-9	25 ppm	38 ppm	——	——
p-Nitroaniline	100-01-6	3 mg/m^3	6 mg/m^3	——	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	——	X
4-Nitrobiphenyl (see WAC 296-62-073)	92-93-3	——	——	——	——
p-Nitrochlorobenzene	100-00-5	0.5 mg/m^3	1.5 mg/m^3	——	X
4-Nitrodiphenyl (see WAC 296-62-073)	——	——	——	——	——
Nitroethane	79-24-3	100 ppm	150 ppm	——	——
Nitrogen	7727-37-9	Simple asphyxiant	——	——	——
Nitrogen dioxide	10102-44-0	——	1 ppm	——	——
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	——	——
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	——	——
Nitroglycerin	55-63-0	——	0.1 mg/m^3	——	X
Nitromethane	75-52-5	100 ppm	150 ppm	——	——
1-Nitropropane	108-03-2	25 ppm	38 ppm	——	——
2-Nitropropane	79-46-9	10 ppm	20 ppm	——	——
N-Nitrosodimethylamine (see WAC 296-62-073)	62-75-9	——	——	——	——
Nitrotoluene	——	——	——	——	——
o-isomer	88-72-2	2 ppm	4 ppm	——	X
m-isomer	98-08-2	2 ppm	4 ppm	——	X
p-isomer	99-99-0	2 ppm	4 ppm	——	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	——	——
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	——	——
Nonane	111-84-2	200 ppm	250 ppm	——	——
Octachloronaphthalene	2234-13-1	0.1 mg/m^3	0.3 mg/m^3	——	X
Octane	111-65-9	300 ppm	375 ppm	——	——
Oil mist mineral (particulate)	8012-95-1	5 mg/m^3	10 mg/m^3	——	——
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	——	——
Oxalic acid	144-62-7	1 mg/m^3	2 mg/m^3	——	——
Oxygen difluoride	7783-41-7	——	——	0.05 ppm	——
Ozone	10028-15-6	0.1 ppm	0.3 ppm	——	——
Paper fiber (Cellulose)	9004-34-6	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Paraffin wax fume	8002-74-2	2 mg/m^3	4 mg/m^3	——	——
Paraquat	——	——	——	——	——
Respirable fraction	4685-14-7 1910-42-5 2074-50-2	0.1 mg/m^3	0.3 mg/m^3	——	X
Parathion	56-38-2	0.1 mg/m^3	0.3 mg/m^3	——	X
Particulate polycyclic aromatic hydrocarbons (benzene soluble fraction) (coal tar pitch volatiles)	65996-93-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Particulates not otherwise regulated	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	——	——
Pentachloronaphthalene	1321-64-8	0.5 mg/m^3	1.5 mg/m^3	——	X
Pentachlorophenol	87-86-5	0.5 mg/m^3	1.5 mg/m^3	——	X
Pentaerythritol	115-77-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Pentane	109-66-0	600 ppm	750 ppm	——	——
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	——	——
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	——	——
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	——	——
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	——	——
Perlite	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Petroleum distillates (Naptha, rubber solvent)	——	100 ppm	150 ppm	——	——
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	——	——
Phenol	108-95-2	5 ppm	10 ppm	——	X
Phenothiazine	92-84-2	5 mg/m^3	10 mg/m^3	——	X
p-Phenylene diamine	106-50-3	0.1 mg/m^3	0.3 mg/m^3	——	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	——	——
Phenyl ether-diphenyl mixture (vapor)	——	1 ppm	3 ppm	——	——
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	——	——
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	——	——
Phenylhydrazine	100-63-0	5 ppm	10 ppm	——	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	——	——
Phenylphosphine	638-21-1	——	——	0.05 ppm	——
Phorate	298-02-2	0.05 mg/m^3	0.2 mg/m^3	——	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	——	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	——	——
Phosphine	7803-51-2	0.3 ppm	1 ppm	——	——
Phosphoric acid	7664-38-2	1 mg/m^3	3 mg/m^3	——	——
Phosphorus (yellow)	7723-14-0	0.1 mg/m^3	0.3 mg/m^3	——	——
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	——	——
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	——	——
Phosphorus pentasulfide	1314-80-3	1 mg/m^3	3 mg/m^3	——	——
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	——	——
Phthalic anhydride	85-44-9	1 ppm	3 ppm	——	——
m-Phthalodinitrile	626-17-5	5 mg/m^3	10 mg/m^3	——	——
Picloram	1918-02-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Picric acid (2, 4, 6-Trinitrophenol)	88-89-1	0.1 mg/m^3	0.3 mg/m^3	——	X
Pindone (2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m^3	0.3 mg/m^3	——	——
Piperazine dihydrochloride	142-64-3	5 mg/m^3	10 mg/m^3	——	——
Pival (Pindone)	83-26-1	0.1 mg/m^3	0.3 mg/m^3	——	——
Plaster of Paris	26499-65-0	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Platinum (as Pt)	7440-06-4	——	——	——	——
Metal	——	1 mg/m^3	3 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Soluble salts	——	0.002 mg/m^3	0.006 mg/m^3	——	——
Polychlorobiphenyls (Chlorodiphenyls)	——	——	——	——	——
42% Chlorine (PCB)	53469-21-9	1 mg/m^3	3 mg/m^3	——	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m^3	1.5 mg/m^3	——	X
Portland cement	65997-15-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Potassium hydroxide	1310-58-3	——	——	2 mg/m^3	——
Propane	74-98-6	1,000 ppm	1,250 ppm	——	——
Propargyl alcohol	107-19-7	1 ppm	3 ppm	——	X
beta-Propiolactone (see WAC 296-62-073)	57-57-8	——	——	——	——
Propionic acid	79-09-4	10 ppm	20 ppm	——	——
Propoxur (Baygon)	114-26-1	0.5 mg/m^3	1.5 mg/m^3	——	——
n-Propyl acetate	109-60-4	200 ppm	250 ppm	——	——
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	——	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	——	——
Propylene	——	Simple asphyxiant	——	——	——
Propylene dichloride (1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	——	——
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	——	X
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	——	——
Propylene imine	75-55-8	2 ppm	4 ppm	——	X
Propylene oxide (1,2-Epoxypropane)	75-56-9	20 ppm	30 ppm	——	——
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	——	——
Pyrethrum	8003-34-7	5 mg/m^3	10 mg/m^3	——	——
Pyridine	110-86-1	5 ppm	10 ppm	——	——
Pyrocatachol (Catechol)	120-80-9	5 ppm	10 ppm	——	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	——	——
RDX (Cyclonite)	——	1.5 mg/m^3	3 mg/m^3	——	X
Resorcinol	108-46-3	10 ppm	20 ppm	——	——
Rhodium (as Rh)	7440-16-6	——	——	——	——
Insoluble compounds, metal fumes and dusts	——	0.1 mg/m^3	0.3 mg/m^3	——	——
Soluble compounds, salts	——	0.001 mg/m^3	0.003 mg/m^3	——	——
Ronnel	299-84-3	10 mg/m^3	20 mg/m^3	——	——
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m^3	0.3 mg/m^3	——	——
Rotenone	83-79-4	5 mg/m^3	10 mg/m^3	——	——
Rouge	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	——	——
Selenium compounds (as Se)	7782-49-2	0.2 mg/m^3	0.6 mg/m^3	——	——
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	——	——
Sesone (Crag herbicide)	136-78-7	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Sevin (Carbaryl)	63-25-2	5 mg/m^3	10 mg/m^3	——	——
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	——	——
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m^3	12 mg/m^3	——	——
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	——	——	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Total particulate	——	6 mg/m^3	12 mg/m^3	——	——
Respirable fraction	——	3 mg/m^3	6 mg/m^3	——	——
Silica, crystalline cristobalite	——	——	——	——	——
Respirable fraction	14464-46-1	0.05 mg/m^3	0.15 mg/m3	——	——
Silica, crystalline quartz	——	——	——	——	——
Respirable fraction	14808-60-7	0.1 mg/m^3	0.3 mg/m^3	——	——
Silica, crystalline tripoli (as quartz)	——	——	——	——	——
Respirable fraction	1317-95-9	0.1 mg/m^3	0.3 mg/m^3	——	——
Silica, crystalline tridymite	——	——	——	——	——
Respirable fraction	15468-32-3	0.05 mg/m^3	0.15 mg/m^3	——	——
Silica, fused	——	——	——	——	——
Respirable fraction	60676-86-0	0.1 mg/m^3	0.3 mg/m^3	——	——
Silicates (less than 1% crystalline silica)	——	——	——	——	——
Mica	——	——	——	——	——
Respirable fraction	12001-26-2	3 mg/m^3	6 mg/m^3	——	——
Soapstone	——	——	——	——	——
Total particulate	——	6 mg/m^3	12 mg/m^3	——	——
Respirable fraction	——	3 mg/m^3	6 mg/m^3	——	——
Talc (containing asbestos) (see WAC 296-62-07705)	——	——	——	——	——
Talc (containing no asbestos)	——	——	——	——	——
Respirable fraction	14807-96-6	2 mg/m^3	4 mg/m^3	——	——
Tremolite (see WAC 296-62-07705)	——	——	——	——	——
Silicon	7440-21-3	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Silicon carbide	409-21-2	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	——	——
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m^3	0.03 mg/m^3	——	——
Soapstone	——	——	——	——	——
Total particulate	——	6 mg/m^3	12 mg/m^3	——	——
Respirable fraction	——	3 mg/m^3	6 mg/m^3	——	——
Sodium azide (as HN3 or NaN3)	26628-22-8	——	——	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m^3	10 mg/m^3	——	——
Sodium-2, 4-dichloro-phenoxyethyl sulfate (Crag herbicide)	136-78-7	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Sodium fluoroacetate	62-74-8	0.05 mg/m^3	0.15 mg/m^3	——	X
Sodium hydroxide	1310-73-2	——	——	2 mg/m^3	——
Sodium metabisulfite	7681-57-4	5 mg/m^3	10 mg/m^3	——	——
Starch	9005-25-8	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Stibine	7803-52-3	0.1 ppm	0.3 ppm	——	——
Stoddard solvent	8052-41-3	100 ppm	150 ppm	——	——
Strychnine	57-24-9	0.15 mg/m^3	0.45 mg/m^3	——	——
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Subtilisins	9014-01-1	——	0.00006 mg/m^3 (60 min.)	——	——
Sucrose	57-50-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Sulfotep (TEDP)	3689-24-5	0.2 mg/m^3	0.6 mg/m^3	——	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	——	——
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	——	——
Sulfuric acid	7664-93-9	1 mg/m^3	3 mg/m^3	——	——
Sulfur monochloride	10025-67-9	——	——	1 ppm	——
Sulfur pentafluoride	5714-22-1	——	——	0.01 ppm	——
Sulfur tetrafluoride	7783-60-0	——	——	0.1 ppm	——
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	——	——
Sulprofos	35400-43-2	1 mg/m^3	3 mg/m^3	——	——
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	——	X
2, 4, 5-T	93-76-5	10 mg/m^3	20 mg/m^3	——	——
Talc (containing asbestos) (see WAC 296-62-07705)	——	——	——	——	——
Talc (containing no asbestos)	——	——	——	——	——
Respirable fraction	14807-96-6	2 mg/m^3	4 mg/m^3	——	——
Tantalum	——	——	——	——	——
Metal and oxide dusts	7440-25-7	5 mg/m^3	10 mg/m^3	——	——
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	——	——
TEDP (Sulfotep)	3689-24-5	0.2 mg/m^3	0.6 mg/m^3	——	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m^3	0.3 mg/m^3	——	——
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	——	——
Temephos (Abate)	3383-96-8	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
TEPP	107-49-3	0.004 ppm	0.012 ppm	——	X
Terphenyls	26140-60-3	——	——	0.5 ppm	——
1, 1, 1, 2-Tetrachloro-2,2-difluoroethane	76-11-0	500 ppm	625 ppm	——	——
1, 1, 2, 2-Tetrachloro-1,2-difluoroethane	76-12-0	500 ppm	625 ppm	——	——
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	——	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	——	——
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	——	X
Tetrachloronaphthalene	1335-88-2	2 mg/m^3	4 mg/m^3	——	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m^3	0.225 mg/m^3	——	X
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	——	——
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m^3	0.225 mg/m^3	——	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	——	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	——	——
Tetrasodium pyrophosphate	7722-88-5	5 mg/m^3	10 mg/m^3	——	——
Tetryl (2, 4, 6-trinitrophenyl-methylnitramine)	479-45-8	1.5 mg/m^3	3 mg/m^3	——	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m^3	0.3 mg/m^3	——	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Thiodan (Endosulfan)	115-29-7	0.1 mg/m^3	0.3 mg/m^3	——	X
Thioglycolic acid	68-11-1	1 ppm	3 ppm	——-	X
Thionyl chloride	7719-09-7	——	——	1 ppm	——
Thiram (see WAC 296-62-07519)	137-26-8	5 mg/m^3	10 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Tin (as Sn)	——	——	——	——	——
Inorganic compounds	7440-31-5	2 mg/m^3	4 mg/m^3	——	——
Tin (as Sn)	——	——	——	——	——
Organic compounds	7440-31-5	0.1 mg/m^3	0.3 mg/m^3	——	X
Tin oxide (as Sn)	21651-19-4	2 mg/m^3	4 mg/m^3	——	——
Titanium dioxide	13463-67-7	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
TNT (2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m^3	1.5 mg/m^3	——	X
Toluene	108-88-3	100 ppm	150 ppm	——	——
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	——-	——
m-Toluidine	108-44-1	2 ppm	4 ppm	——	X
o-Toluidine	95-53-4	2 ppm	4 ppm	——	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	——	X
Toxaphene (Chlorinated camphene)	8001-35-2	0.5 mg/m^3	1 mg/m^3	——	X
Tremolite (see WAC 296-62-07705)	——	——	——	——	——
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	——	——
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	——	——
1, 2, 4-Trichlorobenzene	120-82-1	——	——	5 ppm	——
1, 1, 1-Trichloroethane (Methyl chloroform)	71-55-6	350 ppm	450 ppm	——	——
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	——	——
Trichloroethylene	79-01-6	50 ppm	200 ppm	——	——
Trichlorofluoromethane (Fluorotrichloromethane)	75-69-4	——	——	1,000 ppm	——
Trichloromethane (Chloroform)	67-66-3	2 ppm	4 ppm	——	——
Trichloronaphthalene	1321-65-9	5 mg/m^3	10 mg/m^3	——	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	——	X
1, 1, 2-Trichloro-1, 2, 2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	——	——
Tricyclohexyltin hydroxide (Cyhexatin)	13121-70-5	5 mg/m^3	10 mg/m^3	——	——
Triethylamine	121-44-8	10 ppm	15 ppm	——	——
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	——	——
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	——	——
Trimethylamine	75-50-3	10 ppm	15 ppm	——	——
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	——	——
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	——	——
2, 4, 6-Trinitrophenol (Picric acid)	88-89-1	0.1 mg/m^3	0.3 mg/m^3	——	X
2, 4, 6-Trinitrophenyl-methylnitramine (Tetryl)	479-45-8	1.5 mg/m^3	3 mg/m^3	——-	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m^3	1.5 mg/m^3	——	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m^3	0.3 mg/m^3	——	X
Triphenyl amine	603-34-9	5 mg/m^3	10 mg/m^3	——	——
Triphenyl phosphate	115-86-6	3 mg/m^3	6 mg/m^3	——	——
Tungsten (as W)	7440-33-7	——	——	——	——
Soluble compounds	——	1 mg/m^3	3 mg/m^3	——	——
Insoluble compounds	——	5 mg/m^3	10 mg/m^3	——	——
Turpentine	8006-64-2	100 ppm	150 ppm	——	——
Uranium (as U)	7440-61-1	——	——	——	——
Soluble compounds	——	0.05 mg/m^3	0.15 mg/m^3	——	——
Insoluble compounds	——	0.2 mg/m^3	0.6 mg/m^3	——	——
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	——	——
Vanadium (as V2O5)	——	——	——	——	——
Respirable fraction	1314-62-1	0.05 mg/m^3	0.15 mg/m^3	——	——

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA_8	STEL	Ceiling	Skin
Vegetable oil mist	——	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Vinyl acetate	108-05-1	10 ppm	20 ppm	——	——
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	——	——
Vinyl bromide	593-60-2	5 ppm	10 ppm	——	——
Vinyl chloride (Chloroethylene) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	——	——
Vinyl cyanide (Acrylonitrile) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	——	——
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	——	X
Vinyl toluene	25013-15-4	50 ppm	75 ppm	——	——
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	——	——
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	——	——
Warfarin	81-81-2	0.1 mg/m^3	0.3 mg/m^3	——	——
Welding fumes (total particulate)	——	5 mg/m^3	10 mg/m^3	——	——
Wood dust	——	——	——	——	——
Nonallergenic; (All woods except allergenics)	——	5 mg/m^3	10 mg/m^3	——	——
Allergenics (e.g. cedar, mahogany and teak)	——	2.5 mg/m^3	5 mg/m^3	——	——
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	——	——
m-Xylene alpha, alpha-diamine	1477-55-0	——	——	0.1 mg/m^3	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	——	X
Yttrium	7440-65-5	1 mg/m^3	3 mg/m^3	——	——
Zinc chloride fume	7646-85-7	1 mg/m^3	2 mg/m^3	——	——
Zinc chromate (as CrO3)	Varies with compound	0.05 mg/m^3	——	0.1 mg/m^3	——
Zinc oxide	1314-13-2	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m	——	——
Zinc oxide fume	1314-13-2	5 mg/g^3	10 mg/m^3	——	——
Zinc stearate	557-05-1	——	——	——	——
Total particulate	——	10 mg/m^3	20 mg/m^3	——	——
Respirable fraction	——	5 mg/m^3	10 mg/m^3	——	——
Zirconium compounds (as Zr)	7440-67-2	5 mg/m^3	10 mg/m^3	——	——

AMENDATORY SECTION (Amending WSR 03-01-096, filed 12/17/02, effective 6/1/03)

WAC 296-839-40005 Label containers of hazardous chemicals.

Exemption:

Containers are exempt from this section if **ALL** hazardous contents are listed in Table 11.

You must:

• Make sure every container of hazardous chemicals leaving the workplace is properly labeled. This includes **ALL** of the following:

– The identity of the hazardous chemical (the chemical or common name) that matches the identity used on the MSDS

– An appropriate hazard warning

– The name and address of the chemical manufacturer, importer, or other responsible party

– Make sure labeling does not conflict with the requirements of:

■ The Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.)

AND

■ Regulations issued under the act by the U.S. Department of Transportation (Title 49 of the Code of Federal Regulations, Parts 171 through 180). See http://www.dot.gov

– Revise labels within three months of becoming aware of new and significant information about chemical hazards

– Provide revised labels on containers beginning with the first shipment after a revision, to manufacturers, distributors or employers

– Revise the label when a chemical is not currently used, produced or imported, before:

■ You resume shipping (or transferring) the chemical

OR

■ The chemical is reintroduced in the workplace

– Label information

■ Clearly written in English

AND

■ Prominently displayed on the container

Reference:

Additional labeling requirements for specific hazardous chemicals (for example, asbestos((~~, cadmium, and formaldehyde~~)) and cadmium) are found in chapter 296-62 WAC, General occupational health standards (see parts F, G, ((~~I~~)) and I-1 of that chapter).

Note: When the conditions specified in Table 10 are met for the solid material products listed you are not required to provide labels for every shipment.

Table 10
Labeling for Solid Materials

You need only send labels with the first shipment, IF the product is	**And**
Whole grain	• It is shipped to the same customer **AND** • No hazardous chemicals are part of or known to be present with the product which could expose employees during handling – For example, cutting fluids on solid metal, and pesticides with grain
Solid untreated wood	
Solid metal For example: Steel beams, metal castings	
Plastic items	

Exemptions:

The chemicals (and items) listed in Table 11 are **EXEMPT** from **THIS SECTION** under the conditions specified. Requirements in other sections still apply.

Table 11
Conditional Label Exemptions

This section does not apply to	**When the product is**
• Pesticides – Meeting the definition of "pesticides" in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (see Title 7, U.S.C. Chapter 6, Subchapter II, section 136[1])	• Subject to – Labeling requirements of FIFRA[1] **AND** – Labeling regulations issued under FIFRA by the United States Environmental Protection Agency (EPA) (see Title 40 of the Code of Federal Regulations[2])
• A chemical substance or mixture – Meeting the definition of "chemical substance" or "mixture" in the Toxic Substance Control Act (TSCA) (see Title 15 U.S.C. Chapter 53, Subchapter II, Section 2602[1])	• Subject to – Labeling requirements of TSCA[1] **AND** – Labeling requirements issued under TSCA by the EPA (see Title 40 of the Code of Federal Regulations[2])

Table 11
Conditional Label Exemptions

This section does not apply to	**When the product is**
• Each of the following: – Food – Food additives – Color additives – Drugs – Cosmetics – Medical devices or products – Veterinary devices or products – Materials intended for use in these products (for example: Flavors, and fragrances) • As defined in – The Federal Food, Drug, and Cosmetic Act (see Title 21 U.S.C. Chapter 9, Subchapter II, Section 321[1]) **OR** – Or the Virus-Serum Toxin Act of 1913 (see Title 21 U.S.C. Chapter 5, Section 151 et seq.[1]) **OR** – Regulations issued under these acts (see Title 21 Part 101 in the Code of Federal Regulations, and Title 9, in the Code of Federal Regulations[3])	• Subject to: – Labeling requirements in Federal Food, Drug, and Cosmetic Act, Virus-Serum Toxin Act of 1913, and issued regulations enforced by the United States ■ Food and Drug Administration (see Title 21 Parts 101-180 in the Code of Federal Regulations[3]) **OR** ■ Department of Agriculture (see Title 9, in the Code of Federal Regulations[3])
• Each of the following: – Distilled spirits (beverage alcohols) **AND** – Wine **AND** – Malt beverage • As defined in – The Federal Alcohol Administration Act (see Title 27 U.S.C. Section 201[1]) **AND** – Regulations issued under this act (see Title 27 in the Code of Federal Regulations)[3]	• Subject to: – Labeling requirements of Federal Alcohol Administration Act[1] **AND** – Labeling regulations issued under Federal Alcohol Administration Act by the Bureau of Alcohol, Tobacco, and Firearms (see Title 27 in the Code of Federal Regulations[3])
• Consumer products **AND** • Hazardous substances – As defined in ■ The Consumer Product Safety Act (see 15 U.S.C. 2051 et seq.[1]) **AND** ■ The Federal Hazardous Substances Act (see 15 U.S.C. 1261 et seq.[1])	• Subject to: – A consumer product safety or labeling requirement of the Consumer Product Safety Act or Federal Hazardous Substances Act[1] **OR** – Regulations issued under these acts by the Consumer Product Safety Commission (see Title 16 in the Code of Federal Regulations[3])
• Agricultural seed **AND** • Vegetable seed treated with pesticides	• Labeled as required by – The Federal Seed Act (see Title 7 U.S.C. Chapter 37 Section 1551 et seq.[1]) **AND** – Labeling requirements issued under Federal Seed Act by the United States Department of Agriculture[1]

[1]This federal act is included in the United States Code. See http://www.access.gpo.gov/uscode/uscmain.html

[2]See http://www.epa.gov

[3]See http://www.access.gpo.gov/nara/cfr/index.html

AMENDATORY SECTION (Amending WSR 05-17-168, filed 8/23/05, effective 1/1/06)

WAC 296-841-100 Scope. This chapter applies **only** if your employees:

• Are exposed to a respiratory hazard

OR

• Could be exposed to one of the specific hazards listed below.

This chapter applies to any workplace with potential or actual employee exposure to respiratory hazards. It requires you to protect employees from respiratory hazards by applying this protection strategy:

• Evaluate employee exposures to determine if controls are needed

• Use feasible controls. For example, enclose or confine the operation, use ventilation systems, or substitute with less toxic material

• Use respirators if controls are not feasible or if they cannot completely remove the hazard.

Definition:

Exposed or exposure:

The contact an employee has with a toxic substance, harmful physical agent or oxygen deficient condition, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

Note:

• Examples of substances that may be respiratory hazards when airborne include:

– Chemicals listed in Table 3

– Any substance

• Listed in the latest edition of the NIOSH Registry of Toxic Effects of Chemical Substances

• For which positive evidence of an acute or chronic health hazard exists through tests conducted by, or known to, the employer

• That may pose a hazard to human health as stated on a material safety data sheet kept by, or known to, the employer

– Atmospheres considered oxygen deficient

– Biological agents such as harmful bacteria, viruses or fungi

– Examples include airborne TB aerosols and anthrax

• Pesticides with a label requirement for respirator use

• Chemicals used as crowd control agents such as pepper spray

• Chemicals present at clandestine drug labs.

• These substances can be airborne as dusts, fibers, fogs, fumes, mists, gases, smoke, sprays, vapors, or aerosols.

Reference:

• Substances in Table 3 that are marked with an X in the "skin" column may require personal protective equipment (PPE). See WAC 296-800-160, Personal protective equipment, for additional information and requirements.

• If any of the following hazards are present in your workplace, you will need both this chapter and any of the following specific rules that apply:

Hazard	**Rule that applies**
Acrylonitrile	WAC 296-62-07336
Arsenic (inorganic)	WAC 296-62-07347
Asbestos	WAC 296-62-077
Benzene	Chapter 296-849 WAC
Butadiene	WAC 296-62-07460
Cadmium	WAC 296-62-074 through 296-62-07449 or 296-155-174
Carcinogens	Chapter 296-62 WAC, Part F
Coke ovens	Chapter 296-62 WAC, Part O
Cotton dust	Chapter 296-62 WAC, Part N
1, 2-Dibromo-3-chloropropane	WAC 296-62-07342
Ethylene oxide	Chapter 296-855 WAC
Formaldehyde	Chapter 296-856 WAC ((~~296-62-07540~~))
Lead	WAC 296-62-07521 or 296-155-176
Methylene chloride	WAC 296-62-07470
Methylenedianiline	WAC 296-62-076 or 296-155-173
Thiram	WAC 296-62-07519
Vinyl chloride	WAC 296-62-07329

Chapter 296-856 WAC

FORMALDEHYDE

NEW SECTION

WAC 296-856-100 Scope. This chapter applies to all occupational exposure to formaldehyde. Formaldehyde includes formaldehyde gas, its solutions, and materials that release formaldehyde.

Definitions:

Formaldehyde is an organic chemical with the formula of HCHO, represented by the chemical abstract service (CAS) registry number 50-00-0. Examples of primary uses of formaldehyde and its solutions are as follows:

• An intermediate in the production of:

– Resins.

– Industrial chemicals.

• A bactericide or fungicide.

• A preservative.

• A component in the production of end-use consumer items such as cosmetics, shampoos, and glues.

Exposure is the contact an employee has with formaldehyde, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

Some of the requirements in this chapter may not apply to every workplace with an occupational exposure to formaldehyde. At a minimum, you need to:

• Follow requirements in the basic rules sections, WAC 296-856-20010 through 296-856-20070.

• Use employee exposure monitoring results required by Exposure evaluation, WAC 296-856-20060.

• Follow Table 1 to find out which additional sections of this chapter apply to your workplace.

Table 1
Sections That Apply To Your Workplace

If	Then continue to follow the basic rules, and the additional requirements in
• Employee exposure monitoring results are above the 8-hour time weighted average (TWA_8) or short-term exposure limit (STEL)	• Exposure and medical monitoring, WAC 296-856-30010 through 296-856-30050; **AND** • Exposure control areas, WAC 296-856-40010 through 296-856-40030.
• Employee exposure monitoring results are: – Below the TWA_8 and STEL; **AND** – Above the action level (AL)	• Exposure and medical monitoring, WAC 296-856-30010 through 296-856-30050
• Employee exposure monitoring results are below the AL and STEL	• Exposure and medical monitoring, WAC 296-856-30020 through 296-856-30050

NEW SECTION

WAC 296-856-200 Basic rules.

Your responsibility:

To measure and minimize employee exposure to formaldehyde.

IMPORTANT:

• The requirements in basic rules apply to all employers covered by the scope of this chapter. Additional sections may apply to you. Turn to the scope and follow Table 1 in that section to determine the additional sections of this chapter that apply to you.

Section contents:

Preventive practices
WAC 296-856-20010.
Training
WAC 296-856-20020.
Personal protective equipment (PPE)
WAC 296-856-20030.
Employee protective measures
WAC 296-856-20040.
Exposure evaluations
WAC 296-856-20050.
Notification
WAC 296-856-20060.
Exposure records
WAC 296-856-20070.

NEW SECTION

WAC 296-856-20010 Preventive practices.

You must:

• Make sure containers of gasses, solutions, or materials composed of greater than 0.1 percent formaldehyde, **and** capable of releasing formaldehyde at concentrations greater than 0.1 ppm to 0.5 ppm, are properly labeled, tagged, or marked with all of the following:

– That the product contains formaldehyde.

– The name and address of the responsible party (for example manufacturer, importer, or employer).

– A statement that the physical and health hazard information can be obtained from you, and from the material safety data sheet (MSDS).

• Label, tag, or mark containers and materials capable of releasing formaldehyde at levels above 0.5 ppm as follows:

– Include the words on the label "Potential Cancer Hazard."

– Follow the requirements for labels found in the following separate chapters:

■ The safety and health core rules, employer chemical hazard communications, WAC 296-800-170.

■ Material safety data sheet and label preparation, chapter 296-839 WAC.

You must:

• Make sure you have a housekeeping and maintenance program to detect leaks and spills by doing at least the following:

– Regular visual inspections.

– Preventive maintenance of equipment, that includes surveys for leaks, at regular intervals.

– In areas where spills could occur, make resources available to contain the spills, decontaminate the area affected, and dispose of waste.

– Promptly repair leaks and clean up spills.

– Train employees who will clean spills and repair leaks, about the methods for cleanup and decontamination.

– Make sure employees who will clean up spills and repair leaks, have the appropriate personal protective equipment and respirators.

– Dispose of waste from spills or leaks in sealed containers marked with information that states the contents contain formaldehyde and the hazards associated with formaldehyde exposure.

– Develop and implement appropriate procedures to minimize injury and loss of life if there is a possibility of an emergency, such as an uncontrolled release of formaldehyde.

Note: Following the requirements of a separate chapter, Emergency response, chapter 296-824 WAC, will meet the requirements for emergency procedures.

• Provide emergency washing facilities, for formaldehyde exposures, as required by a separate chapter, the safety and health core rules, First aid, WAC 296-800-150, as follows:

– Emergency showers in the immediate work areas where skin contact to solutions of 1 percent or greater of formaldehyde could occur.

– Emergency eye wash in the immediate work area where an eye contact to solutions of 0.1 percent or greater of formaldehyde could occur.

NEW SECTION

WAC 296-856-20020 Training.

Exemption: Training is not required for employees when you have conclusive documentation that they cannot be exposed to formaldehyde at airborne concentrations above 0.1 parts per million (ppm).

You must:

• Provide training and information to employees exposed to formaldehyde at all of the following times:

– At the time of initial assignment to a work area where there is formaldehyde exposure.

– Whenever there is a new exposure to formaldehyde in their work area.

– At least every twelve months after initial training.

• Make sure training includes at least the following:

– The contents of this chapter and MSDS for formaldehyde.

– The purpose of medical evaluations and a description of how you are fulfilling the medical evaluation requirements of this chapter.

– The health hazards and signs and symptoms associated with formaldehyde exposure, including:

- Cancer hazard.
- Skin and respiratory system irritant and sensitizer.
- Eye and throat irritation.
- Acute toxicity.

– How employees will immediately report any signs or symptoms suspected to be from formaldehyde exposure.

– Descriptions of operations where formaldehyde is present.

– Explanations of safe work practices to limit employee exposure to formaldehyde for each job.

– The purpose, proper use, and limitations of personal protective clothing.

– Instructions for the handling of spills, emergencies, and clean-up procedures.

– An explanation of the importance of exposure controls, and instructions in the use of them.

– A review of emergency procedures, including the specific duties or assignments of each employee in the event of an emergency.

– The purpose, proper use, limitations, and other training requirements for respiratory protection, as required by a separate chapter, Respirators, chapter 296-842 WAC.

• Make sure any written training materials are readily available to your employees at no cost.

NEW SECTION

WAC 296-856-20030 Personal protective equipment (PPE).

You must:

• Provide PPE at no cost to employees and make sure employees wear the equipment.

• Make sure that employees do not take contaminated clothing or other PPE from the workplace.

Select PPE that is appropriate for your workplace based on at least the following:

– The form of formaldehyde, such as gas, solution, or material.

– The conditions of use.

– The hazard to be prevented.

• Provide full body protection for entry into areas where formaldehyde exposure could exceed 100 parts per million (ppm) or when airborne concentrations are unknown.

• Protect employees from all contact with liquids containing one percent or more of formaldehyde by providing chemical protective clothing that is impervious to formaldehyde and other personal protective equipment, such as goggles and face shields, as appropriate for the operation.

• Make sure when face shields are worn, employees also wear chemical safety goggles if there could be eye contact with formaldehyde.

• Make sure contaminated clothing and other PPE is cleaned or laundered before it is used again.

• Repair or replace clothing and other PPE as needed to maintain effectiveness.

• Make sure storage areas for ventilating contaminated clothing and PPE are established to minimize employee exposure to formaldehyde.

– Make sure storage areas and containers for contaminated clothing and PPE have labels or signs with the following warning:

DANGER
Formaldehyde-contaminated (clothing) or equipment
Avoid inhalation and skin contact

You must:

• Make sure that only employees trained to recognize the hazards of formaldehyde remove personal protective equipment (PPE) and clothing from storage areas for the purposes of disposal, cleaning, or laundering.

• Inform any person who launders, cleans, or repairs contaminated clothing or other PPE, of the hazards of formaldehyde and procedures to safely handle the clothing and equipment.

• Provide change rooms for employees who are required to change from work clothes into protective clothing to protect them from skin contact with formaldehyde.

– Make sure change rooms have separate storage facilities for street clothes and protective clothing.

NEW SECTION

WAC 296-856-20040 Employee protective measures.

You must:

• Implement appropriate protective measures while you conduct your exposure evaluation.

– Employees performing activities with exposure to airborne formaldehyde that could exceed the 0.75 ppm, 8-hour time weighted average (TWA_8), or the 2 ppm 15-minute short-term exposure limit (STEL), need to follow the requirements in WAC 296-856-30010 through 296-856-40030 of this chapter.

Reference: For respirator requirements, turn to Respirators, WAC 296-856-40060.

NEW SECTION

WAC 296-856-20050 Exposure evaluations.

IMPORTANT:

• This section applies when there is a potential for an employee to be exposed to airborne formaldehyde in your workplace.

• When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

• Following this section will fulfill the requirements to identify and evaluate respiratory hazards found in a separate chapter, Respiratory hazards, chapter 296-841 WAC.

You must:

• Conduct an employee exposure evaluation to accurately determine airborne concentrations of formaldehyde by completing Steps 1 through 7 of the exposure evaluation process, each time any of the following apply:

– No evaluation has been conducted.

– Changes have occurred in any of the following areas that may result in new or increased employee exposures:

■ Production.

■ Processes.

■ Exposure controls, such as ventilation systems or work practices.

■ Personnel.

■ Equipment.

– You have any reason to suspect new or increased employee exposure may occur.

– You receive a report of employee developing signs and symptoms associated with formaldehyde exposure.

You must:

• Provide affected employees or their designated representatives an opportunity to observe exposure monitoring required by this chapter.

• Make sure observers entering areas with formaldehyde exposure:

– Are provided with and use the same protective clothing, respirators, and other personal protective equipment (PPE) that employees working in the area are required to use;

AND

– Follow any safety and health requirements that apply.

Exposure evaluation process:

Exemption: • Exposure monitoring is not necessary if you have documentation conclusively demonstrating that employee exposure for a particular material and the operation where it is used, cannot exceed the action level (AL) or short-term exposure limit (STEL) during any conditions reasonably anticipated.

• Such documentation can be based on observations, data, calculations, and previous air monitoring results. Previous air monitoring results:

– Must meet the accuracy required by Step 5.

– Must be based on data that represents conditions being evaluated in your workplace.

– May be from outside sources, such as industry or labor studies.

Step 1: Identify all employees who have potential exposure to airborne formaldehyde in your workplace.

Step 2: Identify operations where employee exposures could exceed the 15-minute short-term exposure limit (STEL) for formaldehyde of 2 parts per million (ppm).

Note: You may use monitoring devices such as colorimetric indicator tubes or real-time monitors to screen for activities where employee exposures could exceed the STEL.

Step 3: Select employees from those working in the operations you identified in Step 2 who will have their 15-minute exposures monitored.

Step 4: Select employees from those identified in Step 1 who will have their 8-hour exposures monitored.

– Make sure the exposures of the employees selected represent 8-hour exposures for all employees identified in Step 1, including each job activity, work area, and shift.

■ If you expect exposures to be **below** the action level (AL), you may limit your selection to those employees reasonably believed to have the highest exposures.

■ If you find any of those employees' exposure to be **above** the AL, then you need to repeat monitoring to include each job activity, work area, and shift.

Reference: A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records, as required by Exposure records, WAC 296-856-20070.

– This description can be created while completing Steps 3 through 6 of this exposure evaluation process.

Step 5: Determine how you will obtain accurate employee exposure monitoring results. Select and use an air monitoring method with a confidence level of 95 percent, that is accurate to:

– ±25 percent when concentrations are potentially above the TWA of 0.75 parts per million (ppm).

– ±25 percent when concentrations are potentially above the STEL of 2 ppm.

– ±35 percent when concentrations are potentially above the AL.

Note: • Here are examples of air monitoring methods that meet this accuracy requirement:

– OSHA Method 52 found at http://www.osha.gov/dts/sltc/methods/toc.html.

– NIOSH methods: 2016, 2514, 3500, 2539, and 5700, found at http://www.cdc.gov/niosh/homepage.html and linking to the NIOSH Manual of Analytical Methods.

– Direct reading methods found at http://www.osha.gov/SLTC/formaldehyde/index.html

Step 6: Obtain employee exposure monitoring results by collecting air samples to accurately determine the formaldehyde exposure of employees identified in Steps 3 and 4.

– Make sure samples are collected from each selected employee's breathing zone.

Note: • You may use any sampling method that meets the accuracy specified in Step 5. Examples of these methods include:
– Real-time monitors that provide immediate exposure monitoring results.
– Equipment that collects samples that are sent to a laboratory for analysis.
• The following are examples of methods for collecting samples representative of 8-hour exposures.
– Collect one or more continuous samples, such as a single 8-hour sample or four 2-hour samples.
– Take a minimum of 5 brief samples, such as five 15-minute samples, during the work shift at randomly selected times.
• For work shifts longer than 8 hours, monitor the continuous 8-hour portion of the shift expected to have the highest average exposure concentration.

Step 7: Have the samples you collected analyzed to obtain employee exposure monitoring results for 8-hour and short-term exposure limits (STEL) exposures.

– Determine if employee exposure monitoring results are above or below the following values:

■ 8-hour action level (AL) of 0.5 ppm.

■ 8-hour time-weighted average (TWA_8) of 0.75 ppm.

■ 15-minute short-term exposure limit (STEL) of 2 ppm.

Reference: To use the monitoring results to determine which additional chapter sections apply to employee exposure in your workplace, turn to the Scope, WAC 296-856-100, and follow Table 1 in that section.

Note: • You may contact your local WISHA consultant for help with:
– Interpreting data or other information.
– Determining 8-hour employee exposure monitoring results.
• To contact a WISHA consultant:
– Go to the safety and health core rules, chapter 296-800 WAC;
AND
– Find the resources section, and under "other resources," find service locations for labor and industries.

NEW SECTION

WAC 296-856-20060 Notification.

You must:

• Provide written notification of exposure monitoring results to employees represented by your exposure evaluation, within five business days after the results become known to you.

– In addition, when employee exposure monitoring results are above the permissible exposure limits (PEL), of either the 8-hour time weighted average (TWA_8) or the 15-minute short-term exposure limit (STEL), provide written notification of both of the following within fifteen business days after the results become known to you:

■ Corrective actions being taken and a schedule for completion.

■ Any reason why exposures cannot be lowered to below the PEL.

Note: • You can notify employees either individually or post the notifications in areas readily accessible to affected employees.
• Posted notification may need specific information that allows affected employees to determine which monitoring results apply to them.
• Notification may be:
– In any written form, such as handwritten or e-mail.
– Limited to the required information, such as exposure monitoring results.
• When notifying employees about corrective actions, your notification may refer them to a separate document that is available and provides the required information.

NEW SECTION

WAC 296-856-20070 Exposure records.

You must:

• Establish and keep complete and accurate records for all exposure monitoring conducted under this chapter. Make sure the record includes at least the following:

– The name, unique identifier, and job classification of both:

■ The employee sampled;

AND

■ All other employees represented by the sampled employee.

– An estimate of the exposure for each employee "represented" by this monitoring.

– A description of the methods used to obtain exposure monitoring results and evidence of the method's accuracy.

– Any environmental conditions that could affect exposure concentration measurements.

– A description of the procedure used to obtain representative employee exposure monitoring results.

– The operation being monitored.

– The date, number, duration, location, and the result of each sample taken.

– The type of protective devices worn.

• Maintain documentation that conclusively demonstrates that employee exposure for formaldehyde and the operation where it is used cannot exceed the action level or the 15-minute short-term exposure limit, during any reasonable anticipated conditions.

– Such documentation can be based on observations, data, calculation, and previous air monitoring results.

• Keep exposure monitoring records for at least thirty years.

NEW SECTION

WAC 296-856-300 Exposure and medical monitoring.

Your responsibility:

To monitor employee health and workplace exposures to formaldehyde.

Section contents:

NEW SECTION

WAC 296-856-30010 Periodic exposure evaluations.

Exemption: Periodic employee exposure monitoring is not required if exposure monitoring results conducted to fulfill requirements in this chapter, Exposure evaluations, WAC 296-856-20050, are below both the action level (AL) and 15-minute short-term exposure limit (STEL).

You must:

• Obtain employee exposure monitoring results as specified in Table 2 by repeating Steps 1 and 7 of the exposure evaluation process found within this chapter, in Exposure evaluations, WAC 296-856-20050.

Note: If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you may limit sample collection to the work shift with higher exposures and use those results to represent all employees performing the operation on other shifts.

Table 2
Periodic Exposure Evaluation Frequencies

If employee exposure monitoring results	**Then**
Are above the action level (AL) of 0.5 ppm	Conduct additional exposure monitoring at least every six months for the employees represented by the monitoring results
Are above the short-term exposure limit (STEL) of 2 ppm	Repeat exposure monitoring at least once a year, or more often as necessary to evaluate employee exposure
Have decreased to below the AL **and** the STEL **AND** The decrease is demonstrated by two consecutive exposure evaluations made at least seven days apart	You may **stop** periodic employee exposure monitoring for employees represented by the monitoring results. Note: You need to monitor again if there is a change in any of the following that may result in new or increased employee exposures: • Production • Processes • Exposure controls, such as ventilation systems or work practices • Personnel • Equipment

NEW SECTION

WAC 296-856-30020 Medical and emergency evaluations.

IMPORTANT:

• Medical evaluations completed to meet the respirator use requirements of this section also need to meet the requirements found in a separate chapter, Respirators, medical evaluations, WAC 296-842-140.

You must:

• Make medical evaluations available to current employees who:

– Are exposed to formaldehyde concentrations above the action level (AL) or short-term exposure limit (STEL).

– Are exposed to formaldehyde during an emergency situation.

– Develops signs and symptoms commonly associated with formaldehyde exposure.

• Make medical examinations available to current employees as deemed necessary by the LHCP after reviewing the medical disease questionnaire for employees that are presently not required to wear a respirator.

• Complete Steps 1 through 4 of the medical evaluation process at the following times:

– Initially, when employees are assigned to work in an area where exposure monitoring results are above the action level (AL) or above the STEL.

– At least every twelve months from the initial medical evaluation for employees exposed to formaldehyde above the action level (AL) or the STEL.

– Whenever the employee develops signs and symptoms commonly associated with formaldehyde.

Note: Signs and symptoms are rarely associated with formaldehyde concentrations in air less than 0.1 parts per million (ppm), and in materials at concentration levels less than 0.1 percent.

You must:

• Make medical evaluations available:

– At no cost to employees, including travel costs and wages associated with any time spent obtaining the medical evaluation.

– At reasonable times and places.

Note: • Employees who decline to receive a medical evaluation to monitor for health effects caused by formaldehyde are not excluded from receiving a separate medical evaluation for respirator use.
• If employers discourage participation in medical monitoring for health effects caused by formaldehyde, or in any way interferes with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy.

Medical evaluation process:

Step 1: Select a licensed healthcare professional (LHCP) who will conduct or supervise examinations and procedures.

– If the LHCP is not a licensed physician, make sure individuals who conduct pulmonary function tests, have completed a training course in spirometry, sponsored by an appropriate governmental, academic, or professional institution.

Note: The LHCP must be a licensed physician or supervised by a physician.

Step 2: Make sure the LHCP receives all of the following information before the medical evaluation is performed:

– A copy of this chapter.

– The helpful tools: *Substance Technical Guideline for Formalin, Medical Surveillance, and Medical Disease Questionnaire*.

– A description of the duties of the employee being evaluated and how these duties relate to formaldehyde exposure.

– The anticipated or representative exposure monitoring results for the employee being evaluated.

– A description of the personal protective equipment (PPE) and respiratory protection each employee being evaluated uses or will use.

– Information in your possession from previous employment-related examinations when this information is not available to the examining LHCP.

– A description of the emergency and the exposure, when an examination is provided due to an exposure received during an emergency.

– Instructions that the written opinions the LHCP provides to you, does **not** include any diagnosis or other personal medical information, **and** is limited to the following information:

■ The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to formaldehyde.

■ Any recommended limitations for formaldehyde exposure and use of respirators or other PPE.

■ A statement that the employee has been informed of medical results and medical conditions caused by formaldehyde exposure requiring further examination or treatment.

Step 3: Make a medical evaluation available to the employee. Make sure it includes the content listed in Table 3, Content of Medical Evaluations.

Step 4: Obtain the LHCP's written opinion for the employee's medical evaluation and make sure the employee receives a copy within five business days after you receive the written opinion.

– Make sure the written opinion is limited to the information specified for written opinions in Step 2.

Note: If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

Table 3
Content of Medical Evaluations

When conducting an	Include
Initial **OR** Annual evaluation	• A medical disease questionnaire that provides a work and medical history with emphasis on: – Upper or lower respiratory problems – Allergic skin conditions or dermatitis – Hyper reactive airway diseases – Eyes, nose, and throat irritation • Physical examinations deemed necessary by the LHCP, that include at a minimum: – Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, and respiratory systems, and shortness of breath – Counseling, provided by the LHCP to the employee as part of the medical examination if the LHCP determines that the employee has a medical condition that may be aggravated by formaldehyde exposure • Pulmonary function tests for respirator users, that include at a minimum: – Forced vital capacity (FVC) – Forced expiratory volume in one second (FEV1) – Forced expiratory flow (FEF)
Emergency exposure evaluation	• A medical examination that includes a work history with emphasis on evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation • Additional examinations the licensed healthcare professional (LHCP) believes appropriate, based on the employee's exposure to formaldehyde
Evaluation of reported signs and symptoms	• A medical disease questionnaire that provides a work and medical history with emphasis on: – Upper or lower respiratory problems – Allergic skin conditions or dermatitis – Hyper reactive airway diseases – Eyes, nose, and throat irritation • A physical examination if considered necessary by the LHCP that includes at a minimum:

When conducting an	Include
	– Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, respiratory systems, and shortness of breath – Counseling if the LHCP determines that the employee has a medical condition that may be aggravated or caused by formaldehyde exposure

NEW SECTION

WAC 296-856-30030 Medical removal.

Exemption: Medical removal or restrictions do not apply when skin irritation or skin sensitization occurs from products that contain less than 0.05 percent of formaldehyde.

IMPORTANT:

• This section applies when an employee reports irritation of the mucosa of the eye or the upper airways, respiratory sensitization, dermal irritation, or skin sensitization from formaldehyde exposure.

• When determining the content of formaldehyde in materials that employees have exposure to, you may use documentation, such as manufacturer's data, or independent laboratory analyses.

You must:

• Complete Steps 1 through 4 of the medical evaluation process for removal of employees, in this section, for employees that report signs and symptoms of formaldehyde exposure.

Note: When the employee is exposed to products containing less than 0.1 percent formaldehyde, the LHCP can assume, absent of contrary evidence, that employee signs and symptoms are not due to formaldehyde exposure.

Medical evaluation process for removal of employees:

Step 1: Provide the employee with a medical evaluation by an LHCP selected by the employer.

Step 2: Based on information in the medical questionnaire the LHCP will determine if the employee will receive an examination as described in Table 3, Content of Medical Evaluations, in Medical and emergency evaluations, WAC 296-856-30020.

– If the LHCP determines that a medical examination is not necessary, there will be a two-week evaluation and correction period to determine whether the employee's signs and symptoms resolve without treatment, from the use of creams, gloves, first-aid treatment, personal protective equipment, or industrial hygiene measures that reduce exposure.

■ If before the end of the two-week period the employee's signs or symptoms worsen, immediately refer them back to the LHCP.

■ If signs and symptoms persist after the two-week period, the LHCP will administer a physical examination as outlined in Table 3, Content of Medical Evaluations, in Medical and emergency evaluations, WAC 296-856-30020.

Step 3: Promptly follow the LHCP's restrictions or recommendations. If the LHCP recommends removal from exposure, do either of the following:

– Transfer the employee to a job currently available that:

■ The employee qualifies for, or could be trained for, in a short period of time (up to six months);

AND

■ Will keep the employee's exposure to as low as possible, and never above the AL of 0.5 parts per million.

– Remove the employee from the workplace until either:

■ A job becomes available that the employee qualifies for, or could be trained for in a short period of time **and** will keep the employee's exposure to as low as possible and never above the AL;

OR

■ The employee is returned to work or permanently removed from formaldehyde exposure, as determined by completing Steps 1 through 3 of the medical evaluation process for removal of employees, in this section.

Step 4: Make sure the employee receives a follow-up examination within six months from being removed from the formaldehyde exposure by the LHCP. At this time, the LHCP will determine if the employee can return to their original job status, or if the removal is permanent.

You must:

• Maintain the employee's current pay rate, seniority, and other benefits if:

– You move them to a job that they qualify for, or could be trained in a short period of time, and will keep the employee's exposure to as low as possible and never above the AL;

OR

– In the case there is no such job available, then until they are able to return to their original job status or after six months, which ever comes first.

Note:
• If you must provide medical removal benefits and the employee will receive compensation for lost pay from other sources, you may reduce your medical removal benefit obligation to offset the amount provided by these sources.
• Examples of other sources are:
– Public or employer-funded compensation programs.
– Employment by another employer, made possible by the employee's removal.

• Make medical evaluations available:

– At no cost to employees, including travel costs and wages associated with any time spent obtaining the medical examinations and evaluations.

– At reasonable times and places.

NEW SECTION

WAC 296-856-30040 Multiple LHCP review.

IMPORTANT:

• This section applies each time a medical examination or consultation is performed to determine whether medical removal or restriction is required.

You must:

• Promptly notify employees that they may seek a second medical opinion from an LHCP of their choice, each time a medical examination or consultation is conducted by an LHCP selected by the employer to evaluate medical removal.

– At a minimum, this notification must include the details of your multiple physician review process.

Note: Notification may be provided in writing or by verbal communication.

You must:

• Complete requirements in the multiple LHCP review process once you have been informed of an employee's decision to seek a second medical opinion.

• Pay for and complete the multiple LHCP review process for employees who:

– Inform you in writing or by verbal communication that they will seek a second medical opinion.

– Initiate steps to make an appointment with the LHCP they select. This LHCP will be referred to as the second LHCP.

– Fulfill the previous actions to inform you, and initiate steps for an appointment, within fifteen days from receiving either your notification or the initial LHCP's written opinion, whichever is received later.

Note: This process allows for selection of a second LHCP and, when disagreements between LHCPs persist, for selection of a third LHCP.

Multiple LHCP review process:

Step 1: Make sure the information required by Step 4 of the medical evaluation process is received by the second LHCP. This process is located in the section, Medical and emergency evaluations, WAC 296-856-30020.

– This requirement also applies when a third LHCP is selected.

Step 2: Allow the second LHCP to:

– Review findings, determinations, or recommendations from the original LHCP you selected;

AND

– Conduct medical examinations, consultations, and laboratory tests as necessary to complete their review.

Step 3: Obtain a written opinion from the second LHCP and make sure the employee receives a copy within five business days from the date you receive it. If findings, determinations, and recommendations in the written opinion are:

– Consistent with the written opinion from the initial LHCP, you can end the multiple physician review process. Make sure you follow the LHCP's recommendations.

– Inconsistent with the written opinion from the initial LHCP, then you and the employee must make sure efforts are made for the LHCPs to resolve any disagreements.

■ If the LHCPs quickly resolve disagreements, you can end the multiple physician review process. Make sure you follow the LHCP's recommendations.

■ If disagreements are not resolved within thirty days, continue to Step 4.

Step 4: You and the employee must work through your respective LHCPs to agree on the selection of a third LHCP, or work together to designate a third LHCP to:

– Review findings, determinations, or recommendations from the initial and second LHCP;

AND

– Conduct medical examinations, consultations, and laboratory tests as necessary to resolve disagreements between the initial and second LHCP.

Step 5: Obtain a written opinion from the third LHCP and make sure the employee receives a copy within five business days from the day you receive it.

– Follow the third LHCP's recommendations, unless you and the employee agree to follow recommendations consistent with at least one of the three LHCPs.

NEW SECTION

WAC 296-856-30050 Medical records.

IMPORTANT:

• This section applies when a medical evaluation is performed or any time a medical record is created for an employee exposed to formaldehyde.

You must:

• Establish and maintain complete and accurate medical records for each employee receiving a medical evaluation for formaldehyde and make sure the records include all the following:

– The employee's name and unique identifier.

– A description of any health complaints that may be related to formaldehyde exposure.

– A copy of the licensed healthcare professional's (LHCP's) written opinions.

– Exam results.

– Medical questionnaires.

• Maintain medical records for the duration of employment plus thirty years.

Note: • Employee medical records need to be maintained in a confidential manner. The medical provider may keep these records for you.

• Medical records may only be accessed with the employee's written consent.

NEW SECTION

WAC 296-856-400 Exposure control areas.

Your responsibility:

To control employee exposure to airborne formaldehyde and protect employees by using appropriate respirators.

IMPORTANT:

• These sections apply when employee exposure monitoring results are above the permissible exposure limit (PEL):

– The 8-hour time-weighted average (TWA_8) of 0.75 parts per million (ppm);

OR

– The 15-minute short-term exposure limit (STEL) of two parts per million (ppm).

Section contents:

Exposure controls
WAC 296-856-40010.

Establishing exposure control areas
WAC 296-856-40020.

Respirators
WAC 296-856-40030.

NEW SECTION

WAC 296-856-40010 Exposure controls.

IMPORTANT:

• Respirators and other personal protective equipment (PPE) are **not** exposure controls.

You must:

• Use feasible exposure controls to reduce employee exposures to a level below the permissible exposure limit (PEL) or to as low a level as achievable.

NEW SECTION

WAC 296-856-40020 Establishing exposure control areas.

You must:

• Establish temporary or permanent exposure control areas where airborne concentrations of formaldehyde are above either the 8-hour time weighted average (TWA_8) or the 15-minute short-term exposure limit (STEL), by doing at least the following:

– Clearly identify the boundaries of exposure control areas in any way that minimizes employee access.

– Post signs at access points to exposure control areas that:

■ Are easy to read (for example, they are kept clean and well lit);

AND

■ Include this warning:

DANGER
Formaldehyde
Irritant and Potential Cancer Hazard
Authorized Personnel Only

Note: This requirement does not prevent you from posting other signs.

You must:

• Allow only employees, who have been trained to recognize the hazards of formaldehyde exposure, to enter exposure control areas.

Note:
• When identifying the boundaries of exposure control areas you should consider factors such as:
– The level and duration of airborne exposure.
– Whether the area is permanent or temporary.
– The number of employees in adjacent areas.
• You may use permanent or temporary enclosures, caution tape, ropes, painted lines on surfaces, or other materials to visibly distinguish exposure control areas or separate them from the rest of the workplace.

You must:

• Inform other employers at multi-employer work sites of the exposure control areas, and the restrictions that apply to those areas.

NEW SECTION

WAC 296-856-40030 Respirators.

IMPORTANT:

• The requirements in this section are in addition to the requirements found in the following separate chapters:

– Respiratory hazards, chapter 296-841 WAC.

– Respirators, chapter 296-842 WAC.

• Medical evaluations meeting all requirements of Medical and emergency evaluations, WAC 296-856-30020, will fulfill the medical evaluations requirements found in Respirators, chapter 296-842 WAC, a separate chapter.

You must:

• Develop a written respirator program as required by a separate chapter, Respirators, chapter 296-842 WAC, and include the following additional requirements:

– Require that employees use respirators in any of the following circumstances:

■ Employees are in an exposure control area.

■ Feasible exposure controls are being put in place.

■ Where you determine that exposure controls are not feasible.

■ Feasible exposure controls do not reduce exposures to, or below, the PEL.

■ Employees are performing tasks presumed to have exposures above the PEL.

■ Emergencies.

• Make sure all respirator use is accompanied by eye protection either through the use of full-facepiece respirators, hoods, or chemical goggles.

• Provide employees with powered air-purifying respirators (PAPRs) when this type of respirator will provide appropriate protection **and** any of the following applies:

– A licensed healthcare professional (LHCP) allows this type of respirator in their written opinion.

– The employee has difficulty using a negative pressure respirator.

– The employee chooses to use this type of respirator.

• Make sure you replace the air-purifying chemical cartridge or canister as follows:

– At the beginning of each work shift;

AND

– As required by Respirators, chapter 296-842 WAC.

NEW SECTION

WAC 296-856-500 Definitions.

Action level

An airborne concentration of formaldehyde of 0.5 parts per million of air calculated as an 8-hour time-weighted average.

Authorized personnel

Individuals specifically permitted by the employer to enter the exposure control area to perform duties, or to observe employee exposure evaluations as a designated representative.

Breathing zone

The space around and in front of an employee's nose and mouth, forming a hemisphere with a six- to nine-inch radius.

CAS (chemical abstract service) number

CAS numbers are internationally recognized and used on material safety data sheets (MSDSs) and other documents to identify substances. For more information see http://www.cas.org

Canister or cartridge (air-purifying)

Part of an air-purifying respirator that consists of a container holding materials such as fiber, treated charcoal, or a

combination of the two, that removes contaminants from the air passing through the cartridge or canister.

Container

Any container, except for pipes or piping systems that contains formaldehyde. It can be any of the following:

• Barrel.
• Bottle.
• Can.
• Cylinder.
• Drum.
• Reaction vessel.
• Shipping containers.
• Storage tank.

Designated representative

Any one of the following:

• Any individual or organization to which an employee gives written authorization.

• A recognized or certified collective bargaining agent without regard to written employee authorization.

• The legal representative of a deceased or legally incapacitated employee.

Emergency

Any event that could or does result in the unexpected significant release of formaldehyde. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

Exposure

The contact an employee has with formaldehyde, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

Formaldehyde

An organic chemical with the formula of HCHO, represented by the chemical abstract service (CAS) registry number 50-00-0. Examples of primary uses of formaldehyde and its solutions are as follows:

• An intermediate in the production of:
– Resins.
– Industrial chemicals.
• A bactericide or fungicide.
• A preservative.
• A component in the manufacture of end-use consumer items such as cosmetics, shampoos, and glues.

Licensed healthcare professional (LHCP)

An individual whose legally permitted scope of practice allows him or her to provide some or all of the healthcare services required for medical evaluations.

Permissible exposure limits (PELs)

PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are also specified in WISHA rules found in other chapters. The PEL for formaldehyde is an 8-hour time-weighted average (TWA_8) of 0.75 parts per million (ppm) and a 15-minute short-term exposure limit of 2 ppm.

Short-term exposure limit (STEL)

An exposure limit averaged over a 15-minute period that must not be exceeded during an employee's workday.

Time-weighted average (TWA_8)

An exposure limit averaged over an 8-hour period that must not be exceeded during an employee's workday.

Uncontrolled release

A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk are:

• Large-quantity releases.
• Small releases that could be highly toxic.
• Potentially contaminated individuals arriving at hospitals.
• Airborne exposures that could exceed a WISHA permissible exposure limit or a published exposure limit and employees are not adequately trained or equipped to control the release.

WSR 05-23-145
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 22, 2005, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-074.

Title of Rule and Other Identifying Information: Chapter 296-307 WAC, Safety standards for agriculture; chapter 296-350 WAC, WISHA administrative rules; chapter 296-800 WAC, Safety and health core rules; and chapter 296-900 WAC, Administrative rules.

Hearing Location(s): Department of Labor and Industries, Rooms S117 and S118, 7273 Linderson Way S.W., Tumwater, WA, on January 13, 2006, at 9:30 a.m.

Date of Intended Adoption: February 7, 2006.

Submit Written Comments to: Jim Hughes, Project Manager, P.O. Box 44620, Olympia, WA 98507-4620, e-mail hugw235@lni.wa.gov, fax (360) 902-5619, by January 19, 2006.

Assistance for Persons with Disabilities: Contact Kimberly Russell by January 11, 2006, TTY (360) 902-5008 or e-mail to hata235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Occupational Safety and Health Administration (OSHA) found our administrative rules to be less-effective-than the federal requirements. The proposed changes will make the WISHA rule at-least-as-effective-as the federal equivalent rules. Housekeeping changes will be made, in addition to rewriting for clarity and usability. Existing rules contained in chapter 296-350 WAC, Administrative rules, and WAC 296-800-350 WISHA appeals, penalties, and other procedural rules, are being combined into a single book titled administrative rules and will be applicable to all businesses, including those currently cov-

ered by chapter 296-307 WAC, Safety standards for agriculture.

NEW SECTIONS: WAC 296-900-100 Scope, 296-900-110 Section contents, 296-900-11005 Applying for a variance, 296-900-11010 Interim orders, 296-900-11015 Renewing a temporary variance, 296-900-11020 Changing a variance, 296-900-11025 Variance hearings, 296-900-120 Section contents, 296-900-12005 WISHA inspections, 296-900-12010 Inspection techniques, 296-900-12015 Hazard complaints, 296-900-130 Section contents, 296-900-13005 Citation and notice, 296-900-13010 Copies of future citation and notices, 296-900-13015 Posting citation and notices, 296-900-140 Section contents, 296-900-14005 Reasons for monetary penalties, 296-900-14010 Base penalties, 296-900-14015 Base penalty adjustments, 296-900-14020 Increases to adjusted base penalties, 296-900-150 Section contents, 296-900-15005 Certify violation correction, 296-900-15010 Violation correction action plans, 296-900-15015 Progress reports, 296-900-15020 Timelines of violation correction documents, 296-900-15025 Inform employees about violation correction, 296-900-15030 Tag moveable equipment, 296-900-160 Section contents, 296-900-16005 Requesting more time to comply, 296-900-16010 Post WISHA response to requests for more time, 296-900-16015 Correction date hearing requests, 296-900-16020 Post WISHA's violation correction hearing notice, 296-900-16025 Violation correction hearing procedures, 296-900-16030 Post the violation correction hearing decision, 296-900-170 Section contents, 296-900-17005 Appealing a citation and notice (C&N), 296-900-17010 Appealing a corrective notice of redetermination (CNR), 296-900-17015 Posting appeals, and 296-900-180 Definitions.

Reasons Supporting Proposal: See Purpose above.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of Labor and Industries, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1)(a) requires a small business economic impact statement only when a rule will "impose more than a minor cost on businesses in an industry." An analysis of the proposed rule reveals that in addition to not imposing new costs on businesses, these revisions will make WISHA rules easier for employers and employees to understand and use, and thus save time and resources. Additionally, the rule is exempt from conducting a small business economic impact statement because the changes will make the rule at-least-as-effective-as OSHA and many of the changes are clarifying in nature, RCW 34.05.310 (4)(c) and (d).

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs to assess within these proposed rules. Additionally, the rule is exempt from conducting a cost-benefit analysis because the changes will make the rule at-least-as-effective-as OSHA and many of the changes are clarifying in nature, RCW 34.05.328 (5)(b)(iii) and (iv).

November 22, 2005
Gary Weeks
Director

Chapter 296-900 WAC

ADMINISTRATIVE RULES

NEW SECTION

WAC 296-900-100 Scope. This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

- Employer requests for using an alternative to WISHA requirements.
- Workplace inspections conducted by WISHA.
- Citations and penalties for violations of WISHA safety and health requirements.
- How to respond to actions that WISHA may take when requirements have been violated.
- Employer correction of cited violations, and notification to WISHA when the corrections are made.
- Employer obligations to inform employees.
- Reporting alleged safety and health hazards.
- Appeal and hearing processes for employers and employees.

NEW SECTION

WAC 296-900-110 Variances.

Summary:

Employer responsibility:

To follow requirements on granted variances:

Applying for a variance
WAC 296-900-11005.

Interim orders
WAC 296-900-11010.

Renewing a temporary variance
WAC 296-900-11015.

Changing a variance
WAC 296-900-11020.

Variance hearings
WAC 296-900-11025.

NEW SECTION

WAC 296-900-11005 Applying for a variance.

IMPORTANT:

- A variance provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.
- Variances will **not** be retroactive. Employers are obligated to follow WISHA requirements until the variance is granted.

You must:

• Follow steps 1-5 to apply for a variance when you wish to use an alternative to WISHA requirements as a means to protect your employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note: • A form, Variance Application (F414-021-000), is available for requesting variances:

– From any L&I office.

– On our web site under Safety Forms, Variance Application http://www.lni.wa.gov/FormPublications/Tables-Forms/Safety/SafetyHealth.asp

Reference: • For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

• Posting a copy of the request on your safety bulletin board.

• Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

• Mail to:

Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650

• Fax to: 360-902-5438

• Take to any L&I office.

Step 5: After receiving a written decision from WISHA about your request, immediately notify affected employees of the decision by using the methods in Step 3.

You must:

• Follow the specific requirements of the variance that WISHA has granted.

Note: • If employers fail to follow Steps 1-5 above, the variance cannot be granted.

• Citations may be issued for failing to follow a variance.

• Employers can always follow the original WISHA requirements instead of the variance requirements.

• If your variance is no longer necessary and you decide to follow the WISHA requirements instead, please advise WISHA in writing.

Table 1
Requesting a Variance

For this type of variance:	Include the following on your written application:
Permanent variance	
– Request a permanent variance if you can show that you will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements from which you are requesting relief.	• Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees.
Note: • A permanent variance remains in effect unless WISHA modifies or revokes it. Examples of reasons a variance might be revoked include:	• How employees will be notified: – About the variance request, as required in Step 2 – That they may request a hearing
– An employer requests the variance be revoked	• The following notice on the first page of your posted application, written in large and clear enough print to be easily read:
– Requirements that existed when the variance was approved are modified	"Attention Employees: Your employer is applying to WISHA for a variance from safety and health requirements. You have a right to ask WISHA for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, WISHA will act on the variance request without a hearing."
– The work location is changed	*This date must be 21 calendar days after the variance request is mailed or delivered.

Table 1
Requesting a Variance

For this type of variance:	Include the following on your written application:
Temporary variance	
Request a temporary variance if both of the following apply:	• Provide all the information required above for permanent variances
• New WISHA requirements can't be met for any of the following reasons:	• Also provide all of the following:
– Professional or technical people are not available	– An explanation of why WISHA requirements can't be met, including documentation that supports this belief
– Materials or equipment are not available	– Steps that will be taken to protect employees until WISHA requirements can be met
– Construction or alteration of facilities cannot be completed by the effective date of the requirements	– When WISHA requirements will be met
• You have an effective plan for meeting WISHA requirements as soon as possible.	– A statement that this request is from a qualified person who has first hand knowledge of the facts represented
Note:	
• Temporary variances remain in effect:	
– Until current WISHA requirements are met	
– No longer than one year, unless extended	

What to expect from WISHA:

• A review of all variance requests.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request if you don't provide information needed to make a decision on it.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your variance application. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the variance.

– If granted, the written decision will include all of the following:

■ The requirement for which the variance applies.

■ The locations where the variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the variance.

■ An expiration date for the variance, if applicable.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

• WISHA will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

Note: If there's an appealed WISHA citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

NEW SECTION

WAC 296-900-11010 Interim orders.

Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

You must:

• Request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

Note: An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from WISHA:

• A review of the request for an interim order.

– If more information is needed to make a decision, WISHA may:

■ Contact the employer or others who may have the needed information.

■ Visit the workplace after contacting the employer to make arrangements.

■ Deny the request if the employer doesn't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the interim order request.

– If granted, the decision will include all of the following:

■ The requirement for which the interim order applies.

■ The locations where the interim order applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the interim order.

■ An expiration date for the interim order.

■ The requirement to post the decision.

– If denied, the decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

Note: • WISHA's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.

• WISHA may choose to issue an interim order in response to a variance request, even when the interim order wasn't specifically requested.

• Interim orders are effective until they are revoked, or until the variance request is granted or denied.

NEW SECTION

WAC 296-900-11015 Renewing a temporary variance.

IMPORTANT:

Temporary variances can be renewed up to two times, for up to one hundred eighty days each time.

You must:

• Apply for a temporary variance renewal at least ninety days before the temporary variance expires.

• Send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from WISHA:

• A review of the temporary variance renewal request.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request if you don't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the temporary variance renewal request.

– If granted, the written decision will include all of the following:

■ The requirements for which the temporary variance applies.

■ The locations where the temporary variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the temporary variance.

■ An expiration date for the temporary variance.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

NEW SECTION

WAC 296-900-11020 Changing a variance.

You, your employees, or their representatives may:

• Request changes to variances in writing as follows:

– For a permanent variance only after it's been in effect for at least six months.

– For a temporary variance, only when renewing it.

Note: ■ After six months, WISHA may initiate changes to a variance if they appear to be warranted.

■ Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from WISHA:

• A review of your request to change a variance.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request for a change if you don't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your request to change a variance. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the change in variance.

– If granted, the written decision will include all of the following:

■ The requirements for which the variance applies.

■ The locations for which the variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the change in variance.

■ An expiration date of the variance, if applicable.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

NEW SECTION

WAC 296-900-11025 Variance hearings.

IMPORTANT:

• Employers, affected employees, or employee representatives may request a hearing on any of the following:

– Permanent or temporary variance requests.

– Changes to existing variances.

You and your affected employees must:

• Do all of the following if requesting a variance hearing:

– Put the request in writing and sign it.

– Make sure the request is posted or delivered to the department within twenty-one calendar days from the variance application date, or renewal request date.

– Send the written request to WISHA, using one of the following means:

• Mail to:

Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650

• Fax to: 360-902-5438

• Take to any L&I office.

You must:

• Immediately do all of the following when you receive a notice of the hearing from WISHA:

– Post a copy of the notice on the safety bulletin board.

– Give a copy of the notice to affected employees and employee representatives.

– Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from WISHA:

• WISHA will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:

– Within ten days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.

– Provide you with a notice of the hearing at least twenty calendar days before the hearing date.

• A hearing for the variance or variance change will be conducted as follows:

– A WISHA representative will explain WISHA's view of the request for a variance or any proposed change to a variance.

– Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.

• Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

Note: • WISHA may record a variance hearing.
• Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

NEW SECTION

WAC 296-900-120 Inspections.

Summary:

WISHA inspections
WAC 296-900-12005.
Inspection techniques
WAC 296-900-12010.
Complaints
WAC 296-900-12015.

NEW SECTION

WAC 296-900-12005 WISHA inspections.

• WISHA conducts the following types of **programmed** inspections:

– Hazardous workplaces.

WISHA identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

- Type of industry.
- Injury and illness data that identifies hazards.
- Employer's industrial insurance experience.
- Number, type, and toxicity of contaminants in the workplace.
- Degree of exposure to hazards.
- Number of employees exposed.
- Other factors, such as history of employee complaints.

Note: WISHA periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

– High hazard industries that include the following:

- Agriculture.
- Asbestos renovation and demolition.
- Construction.
- Electrical utilities and communications.
- Logging.
- Maritime.

• WISHA conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of WISHA safety or health requirements or chapter 49.17 RCW, the Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

– Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.

– Referrals from anyone, including former employees, who reasonably believes that workers under WISHA jurisdiction are being, or have been, exposed to a hazard because of a violation.

– Workplace deaths, catastrophic events, or serious injury or illness.

– A reason to believe that employees may be in imminent danger of serious injury or death.

– Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

NEW SECTION

WAC 296-900-12010 Inspection techniques.

• During an inspection, WISHA staff may:

– Take samples, photographs, videotapes, or audiotapes.

– Conduct tests or interviews.

– Ask employees to wear sampling devices.

– Privately question, on or off the worksite, any:

- Employer.
- Employer representative.
- Owner.
- Operator.
- Employee.
- Employee representative.

– Employ any other reasonable investigative techniques.

NEW SECTION

WAC 296-900-12015 Complaints.

Employees or employee representatives may:

• File a written complaint if they believe they have been exposed to a hazard that is a violation of WISHA safety and health requirements.

What to expect from WISHA:

• After receiving a written complaint from an employee or employee representative, WISHA reviews the allegations and responds according to Table 2, WISHA Responses to Employee Complaints.

Table 2
WISHA Responses to Employee Complaints

For this determination:	WISHA will take the following actions:
The complaint is within WISHA jurisdiction and an inspection doesn't appear to be needed at this time	• Call the employer to discuss the complaint • Set a deadline for the employer to respond in writing • Fax or mail a complaint notification letter to the employer. Before the complaint is faxed or mailed, the following names will be removed unless specific permission is given to include them: – The name of the person submitting the complaint – The names of any employees identified in the complaint • Evaluate the employer's response, and do one of the following: – Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint – Inspect the workplace **Note:** • If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, WISHA may schedule an inspection • If the person who filed the original complaint requests in writing that WISHA review a decision not to conduct an inspection, WISHA will review the decision and notify the person in writing of the results

Table 2
WISHA Responses to Employee Complaints

For this determination:	WISHA will take the following actions:
	• If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee
The complaint is within WISHA jurisdiction and an inspection needs to be conducted	• Conduct an inspection • Issue a citation and notice that shows one of the following: – Violations found – No violations were found • Send a letter to the person filing the complaint with inspection results **Reference:** For citation and notice information, turn to citation and notice, WAC 296-900-130
The complaint is not within WISHA jurisdiction	• Send a written response to the person filing the complaint explaining the matter is not within WISHA jurisdiction **Note:** WISHA may make a referral to the proper authority

NEW SECTION

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received:

Citation and notice
WAC 296-900-13005.
Copies of inspection results
WAC 296-900-13010.
Posting citation and notices
WAC 296-900-13015.

NEW SECTION

WAC 296-900-13005 Citation and notice.

Definition:

A citation and notice is a document issued to an employer notifying them of:

• Inspection results.

• Any specific violations of WISHA safety and health requirements.

• Any monetary penalties assessed.

• Employer certification of correction requirements.

• WISHA will mail a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.

– If violations are found, the citation and notice will include:

■ A description of violations found.

■ The amount and type of assessed penalties.

■ The length of time given to correct the violations not already corrected during the inspection.

– If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

NEW SECTION

WAC 296-900-13010 Copies of future citation and notices.

Employees or their representatives wishing to receive copies of citation and notices during the next twelve months must:

• Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries
Standards and Information
P.O. Box 44638
Olympia, WA 98504-4638

Note: • A request for copy of citation and notice form can be obtained by:
– Calling 360-902-5553.
– Contacting the local L&I office.

Reference: ■ For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

• WISHA may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.

• WISHA may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.

• If WISHA grants the request for copies of citation and notices, the employee or employee representative will:

– Receive an approval document from WISHA.

– Receive all citation and notices issued to that employer for the next twelve months.

– Continue receiving citation and notices for an additional twelve months if a one-year extension is requested and approved.

NEW SECTION

WAC 296-900-13015 Posting citation and notices.

You must:

• Immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for three working days or until all violations are corrected, whichever time period is longer.

• Use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

– Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

■ A designated employee representative.

■ Safety representatives.

■ The safety committee.

NEW SECTION

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties
WAC 296-900-14005.
Base penalties
WAC 296-900-14010.
Base penalty adjustments
WAC 296-900-14015.
Increases to adjusted base penalties
WAC 296-900-14020.

Definition:

Monetary penalties are fines assessed against an employer for violations of safety and health requirements.

NEW SECTION

WAC 296-900-14005 Reasons for monetary penalties.

• WISHA **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• WISHA **will** assess monetary penalties under the following conditions:

– When a citation and notice is issued for a serious, willful, or egregious violation.

– When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by WISHA, there are penalties specified by other statutes, such as:
• Asbestos construction projects, RCW 49.26.016.
• Right to know (RTK)—MSDS, RCW 49.70.190.
• Right to know—Penalty for late payment, RCW 49.70.177.

• The minimum civil penalties assessed by WISHA are:

– One hundred dollars for any penalty.

– Five thousand dollars per violation for all willful violations.

– Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

NEW SECTION

WAC 296-900-14010 Base penalties.

• WISHA calculates the base penalty for a violation by considering the following:

– Specific amounts that are dictated by statute;

OR

– By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:
Gravity = Severity x Probability

Note: Most base penalties are calculated by the gravity method.

• Severity and probability are established in the following ways:

Severity:

– Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

– Severity rates are expressed in whole numbers and range from 1 (lowest) to 6 (highest). Violations with a severity rating of 4, 5, or 6 are considered serious.

– WISHA uses Table 3, Severity Rates, to determine the severity rate for a violation.

Table 3
Severity Rates

Severity	Most serious injury, illness, or disease from the violation is likely to be:
6	• Death • Injuries involving permanent severe disability • Chronic, irreversible illness
5	• Permanent disability of a limited or less severe nature • Injuries or reversible illnesses resulting in hospitalization
4	• Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery
3	• Would probably not cause death or serious physical harm, but have at least a major impact on and indirect relationship to serious injury, illness, or disease • Could have direct and immediate relationship to safety and health of employees • First aid is the only medical treatment needed
2	• Indirect relationship to nonserious injury, illness, or disease • No injury, illness, or disease without additional violations
1	• No injury, illness, disease • Not likely to result in injury even in the presence of other violations

Probability:

Definition:

A probability rate is a number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 6 (highest).

– When determining probability, WISHA considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times the hazard is identified in the workplace.
- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.
- Weather and other working conditions.
- Employee skill level and training.
- Employee awareness of the hazard.
- The pace, speed, and nature of the task or work.
- Use of personal protective equipment.
- Other mitigating or contributing circumstances.

– WISHA uses Table 4, Gravity Based Penalty, to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

Table 4
Gravity Based Penalty

Gravity	Base Penalty
1	$100
2	$200
3	$300
4	$400
5	$500
6	$1000
8	$1500
9	$2000
10	$2500
12	$3000
15	$3500
16	$4000
18	$4500
20	$5000
24	$5500
25	$6000
30	$6500
36	$7000

NEW SECTION

WAC 296-900-14015 Base penalty adjustments.

• WISHA may adjust base penalties. Table 5, Adjusted Base Penalties, describes the various factors WISHA considers when adjusting a base penalty, and the effect on the fine.

– The minimum adjusted base penalty for any violation carrying a penalty is one hundred dollars.

– The minimum penalty for willful violations is five thousand dollars.

– The maximum adjusted base penalty for a violation is seven thousand dollars.

• No adjustments are made to minimum penalty amounts specified by statute.

Note: Repeat, willful, egregious, or failure-to-abate (failure to correct) penalty adjustments can exceed seven thousand dollars. See Increases to adjusted base penalties, WAC 296-900-14020, for those penalties.

Table 5
Adjusted Base Penalties

For this type of adjustment:	WISHA will consider:	The base penalty will be adjusted as follows:
Good faith effort	• Awareness of act • Effort before an inspection to provide a safe and healthful workplace for employees • Effort to follow a requirement they have violated • Cooperation during an inspection, measured by a desire to follow the cited requirement and immediately correct identified hazards	Excellent rating = 35% reduction Good rating = 20% reduction Average rating = No adjustment Poor rating = 20% increase
Size of workforce	• Work force size at all sites in Washington state	1-25 employees = 60% reduction 26-100 employees = 40% reduction 101-250 employees = 20% reduction More than 250 employees = No adjustment
Employer history	• History of previous safety and health violations in Washington state and injury and illness rates for that employer	Good history = 10% reduction Average history = No adjustment Poor history = 10% increase

NEW SECTION

WAC 296-900-14020 Increases to adjusted base penalties.

• WISHA may increase an adjusted base penalty in certain circumstances. Table 6, Increases to Adjusted Base Penalties, describes circumstances where an increase may be applied to an adjusted base penalty.

Table 6
Increases to Adjusted Base Penalties

For this circumstance:	The adjusted base penalty may be increased as follows:
Repeat violation When the employer has been previously cited for a substantially similar hazard, with a final order for the previous violation dated no more than 3 years prior to the employer committing the violation being cited.	• Multiplied by the total number of citations with violations involving similar hazards, including the current inspection. **Note:** The maximum penalty can't exceed seventy thousand dollars for each violation.
Willful violation An act committed with the intentional, knowing, or voluntary disregard for the WISHA requirements or with plain indifference to employee safety.	• Multiplied by ten with at least the statutory minimum penalty of five thousand dollars **Note:** The maximum penalty can't exceed $70,000 for each violation.
Egregious violation If the violation was willful and at least one of the following: • The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. • The violations resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities.	• With a separate penalty issued for each instance the employer fails to follow a specific requirement.

Table 6
Increases to Adjusted Base Penalties

For this circumstance:	The adjusted base penalty may be increased as follows:
• The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.	
Failure to abate (FTA) Failure to correct a cited WISHA violation on time. **Reference:** For how to certify corrected violations, go to Certifying violation corrections, WAC 296-900-60005 through 296-900-60035.	• Based on the facts at the time of reinspection, will be multiplied by: – At least five, but up to ten, based on the employer's effort to comply. – The number of calendar days past the correction date, with a minimum of five days. **Note:** The maximum penalty can't exceed seven thousand dollars per day for every day the violation is not corrected.

NEW SECTION

WAC 296-900-150 Certifying violation corrections.
Summary:
Employer responsibility:
• To certify that violations to safety and health requirements have been corrected.
• To submit, if required:
– Additional information.
– Correction action plans.
– Progress reports.
• To comply with correction due dates.
• To tag cited moveable equipment to warn employees of a hazard.
• To inform affected employees that each violation was corrected.
Certify violation correction
WAC 296-900-15005.
Violation correction action plans
WAC 296-900-15010.
Progress reports
WAC 296-900-15015.
Timeliness of violation correction documents
WAC 296-900-15020.
Inform employees about violation correction
WAC 296-900-15025.
Tag moveable equipment
WAC 296-900-15030.

NEW SECTION

WAC 296-900-15005 Certifying violation correction.
Definition:
A correction date is the date by which you must meet the WISHA requirements listed on either a:
• Citation and notice (C&N);
OR
• A corrective notice of redetermination (CNR).
You must:
• Certify in writing within ten calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:
– Employer name and address.
– The inspection number involved.
– The citation and item numbers which have been corrected.
– The date each violation was corrected and the method used to correct them.
– A statement that both:
■ Affected employees and their representatives were informed that each violation was corrected;
AND
■ The information submitted is accurate.
– Employer's signature or the signature of employer's designated representative.

Note: Certification is not required if the WISHA compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

You must:
• Submit additional documentation for willful or repeated violations, demonstrating that they were corrected. This documentation may include, but is not limited to:
– Evidence of the purchase or repair of equipment.
– Photographic or video evidence of corrections.
– Other written records.
• Submit additional documentation for serious violations when required in the C&N or CNR.

NEW SECTION

WAC 296-900-15010 Violation correction action plans.
You must:
• Submit a written violation correction action plan within twenty-five calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:
– Identification of the violation.
– The steps that will be taken to correct the violation.
– A schedule to complete the steps.

– A description of how employees will be protected until the corrections are completed.

What to expect from WISHA:

• WISHA will notify you in writing only if your plan is not adequate, and describe necessary changes.

NEW SECTION

WAC 296-900-15015 Progress reports.

You must:

• Submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:

– Status of each violation.

– Action taken to correct each violation.

– Date each action has or will be taken.

What to expect from WISHA:

• WISHA will state in the C&N or CNR if progress reports are required, including:

– Items that require progress reports.

– Date when an initial progress report must be submitted. The initial progress report is due no sooner than thirty calendar days after you submit a correction action plan.

– Whether additional progress reports are required, and the dates by which they must be submitted.

NEW SECTION

WAC 296-900-15020 Timeliness of violation correction documents.

What to expect from WISHA:

• WISHA will determine the timeliness of violation correction documents by reviewing the following:

– The postmark date for documents sent by mail.

– The date received by other means, such as personal delivery or fax.

NEW SECTION

WAC 296-900-15025 Inform employees about violation correction.

You must:

• Inform employees about violation corrections by doing the following:

– Post a copy of each violation correction document submitted to WISHA, or a summary, near the place where the violations occurred, if practical.

■ If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place readily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.

– Keep violation correction information posted for at least three working days after submitting the correction documents to WISHA.

– Give notice to employees and their representatives on or before the date you submit correction information to WISHA.

– Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

• Inform employees and their representatives of their right to examine and copy all correction documents submitted to WISHA.

– If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to WISHA, provide access or copies no later than five days after receiving their request.

NEW SECTION

WAC 296-900-15030 Tag moveable equipment.

You must:

• Tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:

– Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.

■ For hand-held equipment, tag it immediately after you receive a citation.

■ For other equipment, tag it before moving it within the worksite or between worksites.

Note: The tag should warn employees about the nature of the violation and tell them where the citation is posted.

Reference: For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

You must:

• Make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.

• Keep the tag or copy of the citation attached to movable equipment until one of the following occurs:

– Violations have been corrected and all certification documents have been submitted to WISHA.

– Cited equipment is permanently removed from service.

– The final order from an appeal vacates (voids) the violation.

Note: Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. You can use warning tags that meet those requirements instead of the warning tags required by this rule.

NEW SECTION

WAC 296-900-160 More time to comply.

Summary:

Your responsibility:

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

Requesting more time to comply
WAC 296-900-16005.

Post WISHA's response to requests for more time
WAC 296-900-16010.

Correction date hearing requests
WAC 296-900-16015.

Post WISHA's violation correction hearing notice
WAC 296-900-16020.

Violation correction hearing procedures
WAC 296-900-16025.

Post the violation correction hearing decision
WAC 296-900-16030.

NEW SECTION

WAC 296-900-16005 Requesting more time to comply.

IMPORTANT:

• Employers can request more time to correct violations if they:

– Have made a good faith effort to correct the violation.

– Have not corrected the violation because of factors beyond their control.

You must:

• Submit any requests for more time to correct violations in writing. Requests must be received or postmarked before midnight of the correction date shown on the citation and notice (C&N) or corrective notice of redetermination (CNR), and include:

– The business name.

– The address of the workplaces.

– The citation and the correction dates to be extended.

– The new correction date and length of correction period being requested.

– A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.

– Factors preventing correction of violations by the date required.

– The means that will be used to protect employees while the violation is being corrected.

– Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.

– Employer's signature or the signature of the employer's representative.

– Date.

• Submit requests by one of the following methods:

– First class mail, postage prepaid to any L&I office.

– Take to any L&I office.

– Fax to the number shown in the C&N.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

• WISHA **may:**

– Accept late requests if they are both:

■ Received within five days following the related correction date;

AND

■ Accompanied by your written statement explaining the exceptional circumstances that caused the delay.

Note: WISHA doesn't accept late requests when compliance activity has already started.

• **WISHA may:**

– Respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within twenty-four hours.

– Conduct an investigation before making a decision whether to grant a request for more time.

• WISHA **will:**

– Make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.

– Keep the original correction date in effect unless a notice granting more time is sent.

NEW SECTION

WAC 296-900-16010 Post WISHA's response to requests for more time.

You must:

• Post notices from WISHA approving additional time to correct citations, with the related citation, immediately upon receipt.

• Keep the notices posted until one of the following occur:

– The correction date has passed.

– A hearing notice is requested and posted.

NEW SECTION

WAC 296-900-16015 Correction date hearing requests.

IMPORTANT:

• Affected employees or their designated representatives may request a hearing if they disagree with WISHA's decision to grant an employer more time to correct a violation.

• Employers may request a hearing if WISHA denies their request for more time to correct a violation.

You, your employees, or their representatives must:

• Send requests for hearings, if desired, in writing no later than ten calendar days after the issue date of the notice granting more time to correct a violation to:

– Mail to:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581

– Take to any department service location.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

NEW SECTION

WAC 296-900-16020 Post WISHA's violation correction hearing notice.

You must:

• Post WISHA's hearing notice or a complete copy until the hearing is held, along with the:

– Citation containing the correction date for which more time was requested.

– Department notices issued in response to the employer's request for more time.

NEW SECTION

WAC 296-900-16025 Violation correction hearing procedures.

What to expect from WISHA:

• After receiving a hearing request, the assistant director for WISHA services will appoint someone from WISHA to act as a hearings officer.

• The hearings officer:

– Will send a hearing notice to the employer and employee at least twenty days before the hearing date that includes all of the following:

■ A statement that all interested parties can participate in the hearing.

■ The time, date, and place of the hearing.

■ A short and clear explanation why a hearing was requested.

■ The nature of the proceeding, including the specific sections of the statute or rule involved.

■ The legal authority and jurisdiction under which the hearing will be held.

– May discuss the material to be presented to determine how the hearing will proceed.

• An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.

• The hearing will be conducted by either:

– The hearings officer;

OR

– The assistant attorney general, if requested by the hearings officer.

• After the hearing, WISHA will issue an order that either affirms or modifies the correction date that caused the hearing.

NEW SECTION

WAC 296-900-16030 Post the violation correction hearing decision.

You must:

• Post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

NEW SECTION

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted:

Appealing a citation and notice (C&N)
WAC 296-900-17005.
Appealing a corrective notice of redetermination (CNR)
WAC 296-900-17010.
Posting appeals
WAC 296-900-17015.

NEW SECTION

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT:

• Employers may appeal C&Ns.

• Employees of the cited employer, or their designated representatives, may only appeal correction dates.

You must:

• When appealing, submit a written appeal to WISHA within fifteen working days after receiving the C&N. Include the following information:

– Business name, address, and telephone number.

– Name, address, and telephone number of any employer representative.

– C&N number.

– What you believe is wrong with the C&N and any related facts.

– What you believe should be changed, and why.

– A signature and date.

• Send appeals in any of the following ways:

– Mail to:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581

– Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

Employees or their designated representatives must:

• When appealing C&N correction dates, submit a written request to WISHA within fifteen working days after the C&N is received. Include the following information:

– Name of employee, address, telephone number.

– Name, address, and telephone number of any designated representative.

– C&N number.

– What is believed to be wrong with the correction date.

– A signature and date.

• Send appeals in any of the following ways:

– Mail to:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581

– Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from WISHA:

• After receiving an appeal, WISHA will do one of the following:

– Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

– Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction means that WISHA has decided to provide the employer with an informal conference to discuss their appeal.

• When reassuming jurisdiction over a C&N, WISHA has thirty working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

– Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the

thirty days will begin on the following Monday unless it is a state holiday.

– May be extended fifteen additional working days, if everyone involved agrees and signs an extension agreement within the initial thirty-day period.

– Will include an informal conference about the appeal that is an opportunity for interested parties to:

• Briefly explain their positions.

• Provide any additional information they would like WISHA to consider when reviewing the C&N.

Note: WISHA might reassume jurisdiction over a C&N to do any of the following:

■ Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.

■ Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.

■ Educate employers about the C&N, the WISHA appeals process, and WISHA compliance.

■ Review citations, penalties, and correction dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.

• On or before the end of the thirty working day review period, WISHA will issue a corrective notice of redetermination that:

– Reflects any changes made to the C&N.

– Is sent to the employer, employees, and employee representatives participating in the appeal process.

NEW SECTION

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).

IMPORTANT:

• Employers may appeal CNRs.

• Employees who could be affected by a CNR, or their designated representatives, may appeal correction dates.

Employees or their representatives must:

• Appeal a CNR, if desired, in writing within fifteen working days after it was received to the:

Board of Industrial Insurance Appeals
2430 Chandler Court S.W.
P.O. Box 42401
Olympia, WA 98504-2401

• Send a copy of the appeal to the CNR to the:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581

– Take to any department service location.

NEW SECTION

WAC 296-900-17015 Posting appeals.

You must:

• Immediately post notices and information related to any appeal in the same place where WISHA citation and notices (C&Ns) are posted. These notices and information include:

– The notice of appeal, until the appeal is resolved.

– Notices about WISHA reassuming jurisdiction, and any extension of the review period until the end of review period.

– A notice of an informal conference until after the conference is held.

– A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

NEW SECTION

WAC 296-900-180 Definitions.

Affected employees

Employees who could be one of the following:

– Exposed to unsafe conditions or practices.

– Affected by a request for, or change in, a variance from WISHA requirements.

Assistant director

The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

Board

The board of industrial insurance appeals.

Certification

An employer's written statement describing when and how a citation violation was corrected.

Citation

See citation and notice.

Citation and notice

Issued to an employer for any violation of WISHA safety and health requirements. Also known as a citation and notice of assessment, or simply citation.

Correction action plans

Your written plans for correcting a WISHA violation.

Correction date

The date by which you must meet the WISHA requirements listed on either a:

• Citation and notice (C&N);

OR

• A Corrective notice of redetermination (CNR).

Corrective notice of redetermination (CNR)

Issued by WISHA after WISHA has reassumed jurisdiction over an appealed citation and notice.

Designated representative

Any of the following:

• Any individual or organization to which an employee gives written authorization.

• A recognized or certified collective bargaining agent without regard to written employee authorization.

• The legal representative of a deceased or legally incapacitated employee.

Documentation

Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

Failure to abate (FTA)

A violation that was cited previously which the employer has not fixed.

Final order

Any of the following (unless an employer or other party files a timely appeal):

• Citation and notice.

• Corrective notice of redetermination.

• Decision and order from the board of industrial insurance appeals.

• Denial of petition for review from the board of industrial insurance appeals.

• Decision from a Washington state superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Imminent danger violation

Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Interim order

An order allowing an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

Monetary penalties

Fines assessed against an employer for violations of safety and health requirements.

Movable equipment

A hand-held or nonhand-held machine or device that:

• Is powered or nonpowered.

• Can be moved within or between worksites.

Must

Means mandatory.

Permanent variance

Allows an employer to vary from WISHA requirements when an alternate means, that provides equal protection to workers, is used.

Probability rate

A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 6 (highest).

Reassume jurisdiction

WISHA has decided to provide the employer with an informal conference to discuss their appeal.

Repeat violation

A violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

Serious violation

When there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

– A condition that exists.

– One or more practices, means, methods, operations, or processes that have been adopted or are in use.

Temporary variance

Allows an employer to vary from WISHA requirements under certain circumstances.

Variance

Provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

WAC

An acronym for Washington Administrative Code, which are rules developed to address state law.

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

You

An employer.

Sample Tag for Cited Moveable Equipment

WARNING: EQUIPMENT HAZARD Cited by the **Department of Labor and Industries**	Equipment cited: Hazard cited: For detailed information, see L&I citation posted at:
WARNING: EQUIPMENT HAZARD **See reverse side**	This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met. The tag/citation copy must not be altered, defaced, or covered by other material.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-800-350	Introduction.
WAC 296-800-35002	Types of workplace inspections.
WAC 296-800-35004	Scheduling inspections.
WAC 296-800-35006	Inspection techniques.
WAC 296-800-35008	Response to complaints submitted by employees or their representatives.
WAC 296-800-35010	Citations mailed after an inspection.
WAC 296-800-35012	Employees (or their representatives) can request a citation and notice.
WAC 296-800-35016	Posting a citation and notice and employee complaint information.
WAC 296-800-35018	Reasons to assess civil penalties.
WAC 296-800-35020	Minimum penalties.
WAC 296-800-35022	Base penalty calculations—Severity and probability.
WAC 296-800-35024	Severity rate determination.
WAC 296-800-35026	Probability rate determination.
WAC 296-800-35028	Determining the gravity of a violation.
WAC 296-800-35030	Base penalty adjustments.
WAC 296-800-35032	Types of base penalty adjustments.
WAC 296-800-35038	Minimum and maximum adjusted base penalty amounts.
WAC 296-800-35040	Reasons for increasing civil penalty amounts.
WAC 296-800-35042	Employers must certify that violations have been abated.
WAC 296-800-35044	For willful, repeated, or serious violations, submit additional documentation.
WAC 296-800-35046	Submitting correction action plans.
WAC 296-800-35048	Submit progress reports to the department when required.
WAC 296-800-35049	WISHA determines the date by which abatement documents must be submitted.
WAC 296-800-35050	Inform affected employees and their representatives of abatement actions you have taken.
WAC 296-800-35052	Tag cited moveable equipment to warn employees of a hazard.
WAC 296-800-35056	You can request more time to comply.
WAC 296-800-35062	WISHA's response to your request for more time.
WAC 296-800-35063	Post the department's response.
WAC 296-800-35064	A hearing can be requested about the department's response.
WAC 296-800-35065	Post the department's hearing notice.
WAC 296-800-35066	Hearing procedures.
WAC 296-800-35072	Post the hearing decision.
WAC 296-800-35076	Employers and employees can request an appeal of a citation and notice.
WAC 296-800-35078	Await the department's response to your appeal request.
WAC 296-800-35080	Department actions when reassuming jurisdiction over an appeal.
WAC 296-800-35082	Appealing a corrective notice.
WAC 296-800-35084	Notify employees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-350-010	Definitions.
WAC 296-350-700	Variance from WISHA rules.
WAC 296-350-70010	Purpose of variances.
WAC 296-350-70015	Permanent variances—Description.
WAC 296-350-70020	Temporary variances—Description.
WAC 296-350-70030	Requesting a permanent variance.

WAC 296-350-70035	Requesting a temporary variance.
WAC 296-350-70040	Renewing temporary variances.
WAC 296-350-70045	Submitting variance requests.
WAC 296-350-70050	Notifying employees about variance requests.
WAC 296-350-70055	Department review and decision.
WAC 296-350-70060	Your responsibilities once we make a decision.
WAC 296-350-70065	Changing a variance.
WAC 296-350-70070	Variance hearings.
WAC 296-350-990	Appendix A—Form F418-023-000—Application for copies of citations and notices.

WSR 05-23-146
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 22, 2005, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-15-182.

Title of Rule and Other Identifying Information: Workers' compensation self insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self insure their workers' compensation obligation pursuant to Title 51 RCW. This filing includes modifications in the following areas: Certification requirements, including both financial requirements and claims administration structure requirements, vocational reporting requirements, including ninety-day employability assessment reports and vocational rehabilitation outcome reporting, reporting requirements when initiating and terminating time loss, financial information reporting requirements, submissions of protests and reopening applications to the department, and time frames for payment of penalties.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on January 6, 2006, at 9:30 a.m.

Date of Intended Adoption: February 28, 2006.

Submit Written Comments to: Margaret Conley, P.O. Box 44890, Olympia, WA 98504-4890, e-mail mcgm235@lni.wa.gov, fax (360) 902-6900, by January 6, 2006, 5 p.m.

Assistance for Persons with Disabilities: Contact Margaret Conley by December 9, 2005, TTY (800) 833-6388 or (360) 902-6906.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions should improve the processes by which employers are certified to self insure, enhance understanding of that process and of the requirements and responsibilities of being self-insured, streamline and improve vocational and financial reporting requirements, improve notification to injured workers regarding the status of their compensation, and clarify timeframes for both submission of protests to the department and the payment of penalties.

Reasons Supporting Proposal: To comply with Executive Order 97-02, the self insurance section has reviewed portions of chapter 296-15 WAC using the criteria laid out in the aforementioned executive order. The proposed changes should clarify for employers, workers, and other interested parties the processes and requirements regarding self insurance in Washington state.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095.

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

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jean Vanek, 724 Quince Street S.E., Olympia, WA 98501, (360) 902-6907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 296-15 WAC applies only to businesses that are certified to self-insure in Washington state. Per RCW 19.85.020(1), a business must have fifty or fewer employees to qualify as a small business under the Regulatory Fairness Act. The department reviewed the number of worker hours reported by each employer currently certified to self-insure, and no self-insured business has fewer than fifty employees. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Trista Zugel, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-5122, fax (360) 902-4249, e-mail zugy235@lni.wa.gov.

November 22, 2005
Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-001 Definitions. (1) "Substantially similar" ((~~means~~)):

((~~(1)~~)) (a) The text of the department's document has not been altered or deleted; and

((~~(2)~~)) (b) The self-insurer's document has the text:

((~~(a)~~)) (i) In approximately the same font size;

((~~(b)~~)) (ii) With the same emphasis (bolding, italics, underlining, etc.); and

((~~(c)~~)) (iii) In approximately the same location on the page as the department's document.

(2) "Third-party administrator": An entity which contracts to administer workers' compensation claims for a self-insured employer.

(3) "Claims management entity": All individuals designated by the self-insured employer to administer workers' compensation claims, including self-administered organizations and third-party administrators.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-021 ((~~Individual firm self-insurance application.~~)) Self-insurance certification requirements and application process. (((~~(1) What does individual firm mean when applying for certification to self insure workers' compensation benefits? When applying for certification to self insure workers' compensation benefits, an individual firm means a sole proprietor, partnership or corporation which is responsible for its own audited financial statements.~~

~~(2) What minimum requirements must an individual firm meet to apply for self insurance certification? The department will consider an individual firm's application for self insurance certification if it:~~

~~(a) Meets the department's net worth requirement;~~

~~(b) Has been in business for three years; and~~

~~(c) Has acceptable accident prevention programs in place for at least six months in Washington locations.~~

~~(3) How does an individual firm apply? The individual firm must submit Self Insurance Application SIF-1 L&I form F207-001-000 and three years of financial statements with the most recent year's financial statement audited by a certified independent public accountant.~~

~~(4) What happens after an individual firm submits its application to the department? After the department receives an application from an individual firm, the department will:~~

~~(a) Conduct an evaluation of the written accident prevention program in effect at a sample of the applicant's locations;~~

~~(b) Consider all matters related to the application; and~~

~~(c) Notify the individual firm whether certification is approved or denied thirty days before the requested certification date unless more time is needed.~~

~~(5) What if the application is denied? The application will be denied if the individual firm does not meet the department's financial and/or accident prevention program requirements. If the application is denied for:~~

~~(a) Financial reasons, the individual firm may reapply after its next independently audited financial statement is available. The department may require the applicant to provide additional information.~~

~~(b) Accident prevention program deficiencies, the individual firm may be required to wait six months before reapplying.~~

~~(c) Both financial reasons and accident prevention program deficiencies, the individual firm may reapply after its next independently audited financial statement is available. The department may also require the applicant to wait six months before reapplying.~~

~~(6) What if the application is approved?~~

~~(a) If the application is approved, the individual firm must do all of the following before certification will be granted:~~

~~(i) Provide written acknowledgment L&I form F207-144-000 of its responsibility to pay benefits on all claims incurred during its period of self insurance. This obligation will continue even if the individual firm voluntarily or involuntarily surrenders its self insurance certification.~~

~~(ii) Provide surety in the amount determined necessary by the department. Surety must be filed with the department on a form provided by the department. Initial surety will be the greatest of:~~

~~(A) The minimum surety. This amount is calculated annually by department actuaries and is equal to the projected average current cost of a permanent total disability claim, including time loss, pension reserve and other claim costs paid prior to pension.~~

~~(B) The estimated annual amount of accident fund and medical aid fund premiums the self insurer would have paid if still in the state fund.~~

~~(C) The estimated amount of developed incurred benefits based on the self insurer's past experience with state fund adjusted for changes in the benefit schedules and exposure.~~

~~(D) The estimated average annual incurred losses made by an independent qualified actuary and accepted by the department.~~

~~Surety will never be established at a level lower than the minimum surety amount. The department may increase the initial surety amount if other conditions are expected to alter the potential claim costs and/or the self insurer's ability to pay them. A decrease will not be considered during the first three years of certification.~~

~~(iii) Pay its share of any state fund deficit or insufficiency. See the Employer's Guide to Self Insurance L&I form F207-079-000 for how the deficit share is calculated.~~

~~(iv) Obtain the services of an individual or service organization with an individual qualified to administer a Washington workers' compensation program.~~

~~(A) A qualified claim administrator has satisfactorily demonstrated to the department:~~

~~(I) A thorough knowledge in Title 51 RCW and all workers' compensation rules; and~~

~~(II) An expertise in claim adjudication.~~

~~(B) The claim administrator must also have the authority to make prompt:~~

~~(I) Payment of all compensation and assessments when due; and~~

~~(II) Decisions regarding claim adjudication and awards.~~

~~(C) If a service organization will be used, submit a copy of the service contract.~~

~~(I) The contract copy may delete clause(s) relating to payment of services.~~

~~(II) However, if payment for services is based on the number of claims filed by the self insurer's workers, this must be explained in detail. The department may require an unaltered copy of the agreement for clarification.~~

~~(b) The self insured individual firm will be held accountable for:~~

~~(i) Its entire workers' compensation program, including all actions on its claims, regardless of whether it contracts with a service organization or administers its own program; and~~

~~(ii) Complying with and keeping informed of all changes to industrial insurance laws and rules.~~

~~(c) Certification of an individual self insurer will include all of its subsidiaries (fifty percent owned and/or financial interest controlled by) or divisions doing business in Washington. One certificate will be issued to an approved self insurer. The subsidiaries or divisions will be considered one self insurer for all industrial insurance purposes.~~

~~(d) The effective date of certification will be the first day of the quarter after the department receives the surety and required documentation. If the applicant fails to provide the required information before the approved certification date and later wishes to follow through, the department will require the individual firm to reapply.~~

~~(7) What if an individual firm is a subsidiary of a corporation?~~

~~(a) If an individual self insured firm has a parent(owner of fifty percent and/or having controlling financial interest), the parent must provide the department with its written guarantee L&I form F207-040-000 to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities.~~

~~(b) If a parent fails to provide a guarantee, the department will require the subsidiary to provide surety at one hundred twenty-five percent of its actual requirement. The subsidiary must continue to provide surety at the higher level as long as it has no parental guarantee.~~)) (1) **What requirements must an employer meet to apply for self-insurance certification?** An employer must meet all the following minimum criteria:

(a) Be in business for three years prior to applying for self-insurance.

(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.

(c) Have total assets worth at least twenty-five million dollars as verified by audited financial statements prepared by independent certified accountants.

(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.

(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.

(2) **When are applications processed?** The department processes applications for certification the quarter after the application is accepted. Self-insurance certification for approved applicants will be effective the quarter following processing.

(3) **What documentation must be submitted with an application?** The following documentation must be submitted with each self-insurance application:

(a) A completed application form (Form F207-001-000) with a nonrefundable application fee. The application fee is reviewed annually by the department and is based on the administrative costs incurred in processing an application, but in no instance will it be less than two hundred fifty dollars.

(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.

(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.

(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations, more than one copy of the accident prevention program may be required.

(e) A completed Self-Insurance Certification Questionnaire (Form 207-176-000).

(4) **What happens during the application review process?** The department:

(a) Assesses the accident prevention program at department-selected sites.

(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.

(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.

The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.

(5) **If the application is denied, when may the applicant submit a new application?** If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the corrections to the program are made and have been in place for six months.

If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.

If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.

(6) **What if the application is tentatively approved?** The applicant must submit the following:

(a) Surety in the amount determined by the department and issued on the department form.

(b) A signed copy of the service agreement with a third-party administrator, if applicable.

(i) The contract copy may delete clauses(s) relating to payment of services.

(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail. The department may require an unaltered copy of the agreement for clarification.

(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.

(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.

(e) Payment of any outstanding premium of the applicant's state industrial insurance account.

(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.

If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.

(7) **How is the initial surety requirement established?** The initial surety requirement is established at the highest of the following:

(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or

(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or

(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.

The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.

NEW SECTION

WAC 296-15-024 Additional certification requirements. (1) **What if the employer is a joint venture?** A joint venture is defined as two or more employers that have signed a contractual agreement to operate as a single unit for a specified period of time for the completion of a specific task. The department will consider a joint venture's application for self-insurance if the joint venture is sponsored by a current self-insurer.

In addition to the standard certification requirements found in WAC 296-15-021, an application from a joint venture must include:

(a) The name of a sponsoring party. The sponsoring party must be a certified self-insurer in good standing with the department and have a majority financial interest in the assets and profits of the joint venture.

(b) A list of named participants. Each named participant must also:

(i) Demonstrate that it has at least twenty percent interest in the joint venture.

(ii) Submit three years' worth of audited financial statements prepared by certified independent accountants.

(c) A written acknowledgement from each named participant of its joint and several liability for continuing compensation if any participant of the joint venture defaults. This responsibility continues until the department grants a written release to the joint venture or the remaining participant(s) of the joint venture. A written release from the department is granted only after the contract has been completed and a final settlement of the joint venture account has been made.

(d) A written description of the obligations of each participant for the industrial insurance program of the joint venture.

(e) A written acknowledgement of the sponsoring party's responsibilities for the management of all claims and payment of all compensation incurred during the period of the joint venture's self-insurance certification and after the joint venture is dissolved. This acknowledgement must include the sponsor's continuation of benefits if the joint venture or any of the other parties of the joint venture defaults.

(2) **What if the employer is an employee stock ownership program (ESOP)?** An employee stock ownership program is defined as a firm in which the employees have purchased a majority of the financial interest.

If the employees purchase an existing self-insured company, that company would be required to return to the state industrial insurance fund for a minimum of one year before the department would consider its application for self-insurance.

(3) **What additional requirements exist if the employer is a group?** A group is defined as a group of employers authorized under chapter 51.14 RCW to form self-insurance groups.

(a) In addition to the standard certification requirements found in WAC 296-15-021, an application from a group must include:

(i) A copy of the group's bylaws.

(ii) Individual applications for each of its members along with the current audited financial information of each member.

(iii) A current audited consolidated financial statement of the group (if the group exists at the time of the application).

(iv) A listing of the estimated standard premium to be developed for each member individually and the estimated standard premium of the group as a whole.

(v) An indemnity agreement jointly and severally binding the group and each member to comply with the provisions of Title 51 RCW.

(vi) A detailed budget of all projected administrative revenues and expenses for the first year of operation.

(b) When the application for a group is tentatively approved, the applicant must submit the following:

(i) Surety, established at one hundred twenty-five percent of the standard industrial insurance premiums.

(ii) A copy of the aggregate excess insurance coverage policy.

(iii) Documentation of a contingency reserve that is the greater of:

(A) Fifteen percent of the estimated claims liability; or

(B) Twenty-five percent of the standard industrial insurance premium.

NEW SECTION

WAC 296-15-027 Additional requirements for subsidiaries and acquisitions. (1) **What if an individual firm is a subsidiary of a corporation?**

(a) If an individual self-insured firm has a parent (owner of fifty percent and/or having controlling financial interest), the parent must provide the department with its written guarantee, L&I form F207-040-000, to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities.

(b) If a parent fails to provide a guarantee, the department will require the subsidiary to provide surety at one hundred twenty-five percent of its actual requirement. The sub-

sidiary must continue to provide surety at the higher level as long as it has no parental guarantee.

(c) Certification of an individual self-insurer will include all of its subsidiaries (fifty percent owned and/or financial interest controlled by) or divisions doing business in Washington, as well as new acquisitions after certification becomes final. One certificate will be issued to an approved self-insurer. The subsidiaries or divisions will be considered one self-insurer for all industrial insurance purposes.

(2) **What if a certified self-insurer is acquired by another entity?**

(a) If it is an asset only acquisition, the certified self-insurer must surrender its certification and would retain the self-insurance liabilities and must continue to provide benefits. The new owner would be required to obtain industrial insurance coverage through the state fund. If the new owner wishes to become self-insured, it must meet the department's minimum requirements and submit an application according to the normal certification process.

(b) If the acquisition is a stock acquisition, the new owner must either provide a parental guarantee in accordance with WAC 296-15-024(4), or if it wishes to have the self-insurance certification transferred to the new parent organization, it must:

(i) Provide proof of financial capabilities by furnishing three years of audited financial statements; and

(ii) Furnish evidence of an acceptable claim administration program to oversee a self-insurance program; and

(iii) Demonstrate the existence of an acceptable accident prevention program covering all of its operations in Washington.

AMENDATORY SECTION (Amending Order 74-38, filed 11/18/74, effective 1/1/75)

WAC 296-15-140 Expense of out-of-state audit. ((~~The audit of self-insurance plans at locations outside the state of Washington, shall be at the expense of the self-insurer and the expense incurred in making such audit shall be paid by the self-insurer.~~

~~Such expenses shall be calculated at the usual and normal per diem and travel expense rates established by law and in effect at the time the expenses are incurred.~~)) (1) **When is a self-insurer charged for audit expenses?** The self-insurer must reimburse the department for all travel, per diem and documented expenses as related to the audit when the department representative travels outside the state of Washington.

(2) **How much will the self-insurer be charged?** The self-insured employer is billed the actual costs that the department incurred.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-181 Funding the benefits of an insolvent self-insurer. (1) **What happens when a self-insurer defaults on (stops paying) workers' compensation benefits and assessments?** When a self-insurer stops paying workers' compensation benefits or assessments, and the default is not due to a claims administration decision, the department will take over its surety and claims. ((~~The department will manage the claims and bill the surety each quarter to reimburse benefits paid.~~))

(2) **If a defaulting self-insurer has multiple types of surety, who determines the order in which surety will be used?** The department has the sole authority to determine the order in which surety types will be used.

(3) **What happens if the defaulting self-insurer's surety is exhausted?** When surety is exhausted, the insolvency trust (all self-insurers except school districts, cities and counties) will be assessed quarterly to cover the claim costs paid on behalf of the defaulted self-insurer.

(4) **Who is on the insolvency trust board?** The insolvency trust board consists of the director or designee, three representatives of self-insured employers and one representative of workers. Representatives are nominated by the self-insured and labor communities and are appointed by the director for overlapping two year terms.

(5) **What does the insolvency trust board do?** The board advises the department on insolvency trust matters. The department makes all final decisions.

(6) **What annual report is provided on the insolvency trust fund?** The department provides an annual written status report on the insolvency trust fund as of the end of the previous calendar year to the workers' compensation advisory committee. The report is presented at the committee's first quarterly meeting no later than March 31.

NEW SECTION

WAC 296-15-266 Penalties. What must a self-insurer do when the department issues an order assessing a penalty? The self-insurer must make payment of the penalty assessment on or before the date the order becomes final.

NEW SECTION

WAC 296-15-310 Administrative organization to manage a self-insurance program. Every employer certified to self-insure is obligated to comply with the provisions of Title 51 RCW and the rules and regulations of the department, and to have the necessary administrative processes in place to manage its self-insurance program. Each self-insurer is ultimately responsible for the sure and certain delivery of Title 51 RCW benefits to its injured workers and is accountable for all aspects of its workers' compensation program.

NEW SECTION

WAC 296-15-320 Reporting of injuries. What elements must a self-insurer have in place to ensure the reporting of injuries? Every self-insurer must:

(1) Establish procedures to assist injured workers in reporting and filing claims.

(2) Immediately provide a Self-Insurer Accident Report (SIF-2) form F207-002-000 to every worker who makes a request, or upon the self-insurer's first knowledge of the existence of an industrial injury or occupational disease, whichever occurs first. Only department provided SIF-2 forms may be used. Copies or reproductions are not acceptable.

(3) Establish procedures for ensuring the timely delivery of completed SIF-2s to the claims management entity.

(4) Designate individuals as resources to address employee questions. These resources must:

(a) Have sufficient knowledge to answer routine questions; and

(b) Have responsibility for seeking answers to more complex problems; and

(c) Have detailed knowledge of the self-insurer's claim filing process; and

(d) Be reasonably accessible to employees at every work location.

(5) Maintain a claims log of all workers' compensation claims filed.

(a) For each claim, the log must consist of only the following information:

(i) The complete first and last name of the injured worker (no initials or abbreviations).

(ii) The date of injury, or for an occupational disease, the date of manifestation.

(iii) The claim number found on the department's Self-Insurer Accident Report (SIF-2, form F207-002-000).

(iv) The date the claim is closed.

(v) Whether the claim is a time loss claim or medical only.

(b) The self-insurer must designate the location of the official claims log.

(i) The self-insurer may maintain the log on its premises; or

(ii) The self-insurer may elect to have its third-party administrator maintain the claims log on its behalf. If this option is selected, there must be a written agreement between the self-insurer and the third-party administrator acknowledging that the official claims log is maintained by the third-party administrator.

The self-insurer must notify the department in writing of the location of their official claims log. If the option in (b)(ii) of this subsection is selected, a copy of the written agreement between the self-insurer and the third-party administrator must be provided to the department.

NEW SECTION

WAC 296-15-330 Authorization of medical care. What are the requirements for authorization of medical care? Every self-insurer must:

(1) Authorize treatment and pay bills in accordance with Title 51 RCW and the medical aid rules and fee schedules of the state of Washington.

(2) Provide a written explanation of benefits (EOB) to the provider, with a copy to the worker if requested, for each bill adjustment. A written explanation is not required if the adjustment was made solely to conform to the maximum allowable fees as set by the department.

(3) Establish procedures to ensure prompt responses to inquiries regarding authorization decisions and bill adjustments.

NEW SECTION

WAC 296-15-340 Payment of compensation. What are the requirements for payment of compensation? Every self-insurer must:

(1) Pay time loss compensation in accordance with Title 51 RCW and the rules and regulations of the department.

(2) Select one method for payment of ongoing time loss compensation, either semimonthly or biweekly, and report the selected method to the department.

(3) Provide the department with a detailed written description of any practice of paying workers' regular wages in lieu of time loss compensation, or of paying workers any benefits including sick leave, health and welfare insurance benefits, or any other compensation in conjunction with time loss compensation.

NEW SECTION

WAC 296-15-350 Handling of claims. What elements must a self-insurer have in place to ensure appropriate handling of claims? Every self-insurer must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of department-approved claims administrators to ensure uninterrupted administration of claims.

(a) There must be at least one department-approved claims administrator involved in the daily management of the employer's claims.

(b) If claims are administered in more than one location, there must at all times be at least one department-approved claims administrator in each location where claims are managed.

(3) Designate one department-approved claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

NEW SECTION

WAC 296-15-360 Qualifications of personnel. How does an individual become a department-approved claims administrator?

(1) An individual must pass the department's "self-insurance claims administrator" test to be accepted as a department-approved claims administrator. In order to be admitted to take this test, an individual must meet the following requirements:

(a) Submit a completed application form to the department (Form F207-177-000). The application must be received by the department no less than forty-five days prior to the scheduled examination date.

(b) Have a minimum of three years of experience in the administration of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to the filing of the application.

The department will review the application and determine if the applicant meets the minimum requirements to take the examination. Notification will be mailed to the applicant no less than fourteen days prior to the scheduled examination date.

If an applicant fails the examination, he or she must submit another completed application requesting to take the examination again. An applicant must wait six months after a failed result before retaking the examination.

(2) The designation of department-approved claims administrator is valid for five years or until an individual retakes the examination, whichever occurs first. The most recent examination results will always reflect an individual's status as a claims administrator. To maintain approved status, an individual must:

(a) Make application as outlined in subsection (1) of this section; and

(b) Pass the "self-insurance claims administrator" examination again.

The department-approved claims administrator is responsible for notifying the department of any changes in his or her mailing address, work location, or employment status.

NEW SECTION

WAC 296-15-370 Notification to the department. When must a self-insurer notify the department about changes in its administrative organization? Any changes to the self-insurer's established administrative organization must be reported to the department in writing, within ten days of the effective date of the change.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-420 After a self-insured claim is filed. (1) **What must a self-insurer do when beginning time loss (TL) benefits on a claim?**

((~~When beginning time loss payments, a self-insurer must:~~))

When	Send to the worker	Send to the department	The department will
((~~At the same time as~~)) On the date of the first TL payment.	A complete and accurate SIF-5[1] and SIF-5A[2].		
Within 5 working days of first TL payment.		Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2)) or denial (see subsection (3)) has been received.
If kept on salary[3], within 5 working days of the date the first TL payment would have been due.	A complete and accurate SIF-5 and SIF-5A.	Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2) of this section) or denial (see subsection (3) of this section) has been received.

[1] The SIF-5 is the Self-Insurer's Report on Occupational Injury or Disease. Use a form substantially similar to L&I form F207-005-000.

[2] The SIF-5A is the Time Loss Calculation Rate Notice. Use a form substantially similar to L&I form F207-156-000.

[3] If the worker is kept on salary, report the amount of time loss the worker would have been entitled to on the SIF-5.

(2) **How must a self-insurer request an interlocutory[1] order?**

When requesting an interlocutory order from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60[2] days of claim filing.	A complete and accurate SIF-5 and SIF-5A if TL was paid or if worker was kept on salary.	Copies of the SIF-2, SIF-5 (with the interlocutory order box checked), SIF-5A, AND all ((~~medical and other pertinent information~~)) records excluding bills AND a reasonable explanation why an ((~~investigation~~)) interlocutory order is needed.	If it agrees, issue an interlocutory order.	Provisional TL if the worker is eligible AND other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible, and other entitled benefits.

[1] An interlocutory order places a claim in provisional status while the self-insurer investigates the validity of the claim.

[2] When not specified, time is in calendar days.

(3) **How must a self-insurer request claim denial from the department?**

When requesting claim denial from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60 days of claim filing.	SIF-4.((~~*~~))[1] Copy to the attending or treating doctor.	SIF-4 AND all ((~~medical and other pertinent information supporting denial~~)) records excluding bills.	If it agrees, issue a denial order. The denial order will restate the self-insurer's right to request reimbursement of provisional TL from the worker.	For all medical evaluations and diagnostic studies used to make the determination.
			If it finds insufficient information to make a decision, issue an interlocutory order AND direct the employer to obtain the necessary information.	Provisional TL if the worker is eligible and other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible AND other entitled benefits.

((~~*~~)) [1]The SIF-4 is the Self-Insured Employer's Notice of Denial of Claim. Use a form substantially similar to L&I form F207-163-000.

(4) **What if a self-insurer does not request allowance, denial, or an interlocutory order for a claim within sixty days?**

If a self-insurer does not request allowance, denial, or an interlocutory order within sixty days, the department will intervene and adjudicate the claim. The department may obtain additional medical information to make the determination. The claim remains in provisional status until the department makes the determination.

The exception to this requirement is the allowance of medical only claims. Self-insurers are not required to request allowance for medical only claims.

(5) **Must a self-insurer submit an SIF-5 each time the department requests one?**

Yes. A self-insurer must submit a complete and accurate SIF-5 within ten working days of receipt of a written request from the department.

(6) **What must a self-insurer do when the department requests information on a claim by certified mail?**

A self-insurer must submit all requested information ((~~in its possession~~)) concerning the claim within ten working days of receipt of the department's request by certified mail.

(7) **How long does a self-insurer have to provide a copy of the claim file to the worker or worker's representative?**

A self-insurer must provide a copy of the claim file within fifteen days of receiving a written request from the worker or worker's representative. Unless the worker or representative requests a particular portion of the file, the self-insurer must provide a copy of the entire file.

(8) **When may a self-insurer charge a worker or his/her representative for a copy of the claim file?**

A self-insurer must provide the first copy of a claim file free of charge. Upon receipt of a subsequent written request, the self-insurer must provide any material not previously supplied free of charge. The self-insurer may charge the worker or any representative a reasonable fee for any material previously supplied.

(9) **What must a self-insurer do when it terminates time loss ((~~because it has found the worker ineligible for vocational services~~))?**

((~~Within five working days~~)) No later than the date of time loss termination, a self-insurer must notify ((~~the department it has found~~)) the worker ((~~ineligible for vocational services. Use an Employability Assessment Report (EAR) substantially similar to L&I form F207-121-000~~)) in writing of the reasons for time loss termination. If termination is based on a release to work not received directly from the worker, attach a copy of the release to the notice.

NEW SECTION

WAC 296-15-430 Vocational services. (1) **When must a self-insurer submit an Employability Assessment Report (EAR) to the department?**

(a) Within five working days of the date time loss benefits are terminated because the worker is not eligible for vocational services.

Note: An EAR is not required if the worker is not eligible for vocational services because they returned or were released to work at the job at time of injury.

(b) Within five working days of when the self-insurer finds the worker eligible for vocational services.

The self-insurer must use an Employability Assessment Report (EAR) substantially similar to L&I form F207-121-000.

(2) **When must a self-insurer submit a vocational rehabilitation plan to the department?** A self-insurer must submit a vocational plan to the department with a copy to the worker within ten calendar days after being signed by the worker, vocational rehabilitation provider, and the employer.

(3) **What must the vocational rehabilitation plan include?**

(a) An assessment of the worker's skills and abilities considering the worker's physical capacities and mental status, aptitudes and transferable skills gained through prior work experience, education, training and avocation;

(b) The services necessary to enable the worker to become employable in the labor market;

(c) Labor market survey supportive of the worker's employability upon plan completion;

(d) Documentation of the time and costs required for completion of the plan;

(e) A direct comparison of the worker's skills, both existing and those to be acquired through the plan, with potential types of employment to demonstrate a likelihood of plan success;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) Any other information that may significantly affect the plan; and

(h) An agreement signed by the provider and worker that:

(i) Acknowledges that the provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan; and

(ii) Sets forth the provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan.

The provider must use forms approved by, or substantially similar to forms used by, the department in order to document the agreement.

(4) **What is required for a formal review of the vocational rehabilitation plan?** The employer or the worker may request the department review the vocational rehabilitation plan. The reasons for the review must be stated in writing, and the request must be made prior to completion or termination of the plan.

(5) **What must the self-insurer do when the vocational rehabilitation plan is successfully completed?** The self-insurer must submit a closing report to the department within five working days of terminating time loss benefits. The closing report shall contain at least the following:

(a) Documentation of the worker's successful completion of the vocational plan; and

(b) Documentation of whether or not the worker has returned to work at the time of the report.

(6) **What must the self-insurer do if the vocational rehabilitation plan is not successfully completed?** The self-insurer must either:

(a) Continue time loss benefits and submit a new or modified vocational rehabilitation plan to the department within ten calendar days after being signed by the worker, vocational rehabilitation provider, and the employer; or

(b) Within five working days of the date time loss benefits are terminated because the worker is not eligible for vocational services, submit an Eligibility Assessment Report (EAR) to the department with supporting documentation assessing the worker's employability status.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-450 Closure of self-insured claims. (1) **Who closes self-insured claims?**

The department has the authority to close all self-insured claims. Self-insurers have the authority to close certain claims.

Within two years of claim closure, the department may require a self-insurer to pay additional benefits on a claim the self-insurer closed if the self-insurer:

(a) Made an error in benefits paid; or
(b) Violated the conditions of claim closure.

(2) **What claims may a self-insurer close?**

A self-insurer may close	**If the**	**With time loss?**	**Other requirements?**	**With PPD?**	((~~**If a previous determinative order was issued?**~~
Medical only (MO) claims	Claim was filed on or after ((~~07/26/81~~)) 07/01/90 and before 08/01/97	Without	None.	Without[1]	~~May not be closed by the employer.~~
Time loss (TL) claims	((~~Injury/illness occurred~~)) Claim was filed on or after 07/01/86 and before 08/01/97	With	1. Not if the department issued an order resolving a dispute; AND 2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits.[2]	Without[1]	~~May be closed by the employer if the order did not resolve a dispute~~
All claims: Medical only (MO) claims Time loss (TL) claims Permanent partial disability (PPD) claims	((~~Injury/illness occurred~~)) Claim was filed on or after 08/01/97	With or without	1. Not if the department issued an order resolving a dispute; AND 2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits;[2] AND 3. Only if the closing medical report was sent to the attending or treating doctor and 14[3] days allowed for response.	With or without	~~May be closed by the employer if the order did not resolve a dispute.~~))

[1] A self-insurer may not close a claim with PPD if the injury or illness occurred before 08/01/97.
[2] Comparable means the wages and benefits are at least ninety-five percent of the wages and benefits received by the worker at the time of injury.
[3] When not specified, time is in calendar days.

(3) **When a self-insurer is closing a PPD claim, what must it do with the closing medical report?**

When a self-insurer is closing a PPD claim, it must send the closing medical report to the attending or treating doctor, and the doctor must be allowed fourteen days to respond. When the attending or treating doctor responds:

Within 14 days	**And the doctor AGREES with**	**And the doctor DISAGREES with**	**Then the self-insurer**	
Within	Fixed and stable and PPD rating		MAY	Close the claim.
Does not respond			MAY	Close the claim
Within or before the order is issued		Fixed and stable	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.

Within 14 days	And the doctor AGREES with	And the doctor DISAGREES with	Then the self-insurer	
Within or before the order is issued	Fixed and stable	PPD rating	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.
Not within, after the order is issued, but before the order is final		Fixed and stable and/or PPD rating	MUST	Forward the claim including the doctor's response to the department as a protest within five working days of receipt.

(4) **What must a self-insurer do with a closing medical report, regardless of who is closing the claim?**

A self-insurer must send the closing medical report to the attending or treating doctor. If the doctor responds that he/she does not concur with the results, the self-insurer must:

(a) Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list in order to do the closing action itself; OR

(b) Forward the claim to department for closure. The department may require additional medical examinations.

(5) **When a self-insurer is closing a claim, what written notice must it provide to the worker and attending or treating doctor?**

At claim closure, a self-insurer must send the closing order to the worker and attending or treating doctor.

(a) For a MO claim, use a Self-Insurer's Claim Closure Order and Notice substantially similar to F207-020-111.

(b) For a TL claim, use a Self-Insured Employers' Time Loss Claim Closure Order and Notice substantially similar to F207-070-000. Include a complete and accurate SIF-5 substantially similar to L&I form F207-005-000 with the worker's copy.

(c) For a PPD claim:

(i) When no TL or loss of earning power (LOEP) was paid, use a form substantially similar to L&I form F207-165-000 (MO with PPD). Include a complete and accurate SIF-5 with the worker's copy.

(ii) When TL or LOEP was paid, use a form substantially similar to L&I form F207-164-000 (TL with PPD). Include a complete and accurate SIF-5 with the worker's copy.

(6) **When a self-insurer is closing a claim, what information must it submit to the department?**

A self-insurer must submit to the department:

(a) MO claim closures by the end of the month following closure. These may be transferred electronically or reported by paper.

(i) Closures transferred electronically must be in the department's format.

(ii) Closures submitted in paper must include the SIF-2 L&I form F207-002-000 showing the date of closure and any vocational services provided.

(b) TL and PPD claim closures at the time of closure. Include copies of each of the following:

(i) SIF-2 if not previously submitted.

(ii) Closure order.

Note: If no one protests the self-insurer's closure order, it will become final and binding in sixty days, just like a department order.

(iii) A PPD Payment Schedule, if necessary, substantially similar to L&I form F207-162-000.

(A) A payment schedule is required when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(B) The first payment of the PPD award must be paid within five working days of claim closure. Continuing payments must be paid according to the established payment schedule.

(iv) A complete and accurate SIF-5 (((~~(with the Rehabilitation Outcome Report (ROR) portion completed if vocational services were provided)~~))) showing all requirements for closure have been met, any TL or LOEP paid, period of payment, and total amount paid.

(7) **When the department is closing a claim, what must the self-insurer submit when requesting claim closure?**

When a self-insurer is asking the department to close the claim, it must submit:

(a) A complete and accurate SIF-5 (((~~(with the ROR portion completed if vocational services were provided)~~))); and

(b) All ((~~medical and other pertinent information (~~)) records not previously submitted to the department((~~)~~)) excluding bills.

(8) **When the department has closed a PPD claim, when must the self-insurer create a payment schedule?**

When the department has closed a PPD claim, the self-insurer must create a PPD Payment Schedule substantially similar to L&I form F207-162-000 when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(9) **When the department has closed a PPD claim, when must the self-insurer make the first payment of the award?**

When the department has closed a PPD claim, the self-insurer must make the first payment of the award without delay. Continuing payments must be paid according to the established payment schedule.

NEW SECTION

WAC 296-15-470 When a worker files for reopening. When must a self-insurer forward an application to

reopen a claim to the department? A self-insurer must forward an application to reopen a claim to the department within five working days of receipt.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-480 ((~~After~~)) When a self-insured claim is ((~~closed~~)) protested. (((~~1~~))) **When must a self-insurer submit a worker's written protest or appeal to the department?**

A self-insurer must submit a written protest ((~~or appeal~~)) by a worker to the department within five working days of receipt. The date the protest ((~~or appeal~~)) is received by the self-insurer is considered the date the protest ((~~or appeal~~)) is received by the department.

(((~~(2) When must a self-insurer forward an application to reopen a claim to the department?~~

~~A self-insurer must forward an application to reopen a claim to the department within five working days of receipt.~~))

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-490 When a self-insured claim is on appeal. (1) **When must a self-insurer submit a worker's written appeal to the department?** A self-insurer must submit to the department a written appeal by a worker within five working days of receipt. The date the appeal is received by the self-insurer is considered the date the appeal is received by the department.

(2) **How may department orders be defended in self-insured appeals?**

The department may ask the office of the attorney general to represent the department at the board of industrial insurance appeals.

(((~~(2)~~))) (3) **What must a self-insurer send to the department when any party appeals a claim to superior or appellate court?**

When any party appeals a claim to superior or appellate court, the self-insurer must promptly send to the department copies of the notice of appeal, judgment, and all other relevant information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-15-031	Employee stock ownership plan self insurance application.
WAC 296-15-041	Joint venture self insurance application.
WAC 296-15-051	Public entity self insurance application.
WAC 296-15-061	Employer group self insurance application.
WAC 296-15-120	Log of occupational injuries and illnesses.
WAC 296-15-500	What vocational rehabilitation reports are required for self-insured employers?
WAC 296-15-510	What is the process used for vocational rehabilitation with regard to self-insured employers?

WSR 05-23-160
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed November 22, 2005, 4:30 p.m.]

In accordance with RCW 34.05.335(1), the Department of Labor and Industries will not adopt the following WAC sections related to agriculture, brush pickers and farm labor: Definition of farm labor contractor, WAC 296-17-31014, 296-17-643, 296-17-644, 296-17-645, 296-17-649, 296-17-64901, 296-17-64902, 296-17-64903, 296-17-64905, 296-17-772, 296-17-773, 296-17-777, and 296-17-778. After considering the public hearing and written comments, the department is filing a new CR-101 to allow additional public comment on these WAC sections.

The CR-102 for these WAC sections was filed as WSR 05-20-069 on October 4, 2005.

Carmen Moore
Rules Coordinator

WSR 05-23-163
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed November 23, 2005, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-129.

Title of Rule and Other Identifying Information: WAC 388-515-1505 Community options program entry system (COPES).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on December 27, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500

10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. December 27, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 23, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is adding program of all-inclusive care for the elderly (PACE) and Medicare-Medicaid integration project (MMIP) to this WAC section. The department is also changing some wording to make the rule clearer.

Reasons Supporting Proposal: People will know there are other community-based long-term care programs available to assist clients in addition to COPES.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Rolley, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1304; Implementation and Enforcement: Mary Lou Percival, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical and financial assistance programs are exempt from the CBA requirement according to RCW 34.05.328 (5)(b)(vii).

November 18, 2005
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-03-077, filed 1/17/05, effective 2/17/05)

WAC 388-515-1505 ((~~Community options program entry system (COPES)~~)) Financial eligibility requirements for long-term care services under COPES, PACE, and MMIP. (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for ((~~waiver~~)) home or community-based long-term care (LTC) services provided under the following programs:

(a) Community options program entry system (COPES) ((~~and the rules used to determine a client's participation in the total cost of care.~~

~~(1)~~)) (b) Program of all-inclusive care for the elderly (PACE); and

(c) Medicare/Medicaid integration project (MMIP).

(2) To be eligible ((~~for COPES~~)), a client must:

(a) ((~~Be eighteen years of age or older;~~)) Meet the program and age requirements for the specific program, as follows:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705; or

(iii) MMIP waiver services, per WAC 388-106-0725.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC ((~~388-503-0510(1)~~)) 388-511-1105(1);

(c) Require the level of care provided in a nursing facility as described in WAC ((~~388-72A-0055~~)) 388-106-0355;

(d) Be residing in a medical facility as defined in WAC ((~~388-513-1301~~)) 388-500-0005, or likely to be placed in one within the next thirty days in the absence of ((~~waiver~~)) home or community-based LTC services ((~~described in WAC 388-71-0410 and 388-71-0415~~)) provided under one of the programs listed in subsection (1) of this section;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of ((~~waivered~~)) home or community based LTC services and be approved for a plan of care as described in ((~~WAC 388-72A-0055~~)) subsection (2)(a)(i), (ii), or (iii);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections ((~~(2),~~)) (3) ((~~and~~)), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

((~~(2)~~)) (3) Refer to WAC 388-513-1315 for rules used to determine nonexcluded resources and income.

((~~(3)~~)) (4) Nonexcluded resources above the standard described in WAC 388-513-1350(1):

(a) Are allowed during the month of an application or eligibility review, when the combined total of excess resources and nonexcluded income does not exceed the special income level (SIL).

(b) Are reduced by ((~~incurred~~)) medical expenses incurred by the client (for definition, see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(i) Health insurance and Medicare premiums, deductions, and co-insurance charges; and

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.

(c) Not allocated to participation must be at or below the resource standard((~~, otherwise~~)). If excess resources are not allocated to participation, then the client is ineligible.

((~~(4)~~)) (5) Nonexcluded income must be at or below the SIL and is allocated in the following order:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Maintenance and personal needs allowances as described in subsection (((~~(6),~~))) (7), ((~~and~~)) (8), and (9) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income garnisheed for child support or withheld ((~~pursuant~~)) according to a child support order:

(i) For the time period covered by the maintenance amount; and

(ii) Not deducted under another provision in the post-eligibility process.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (6)(b) unless a greater amount is allocated as described in subsection (((~~(5)~~))) (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide ((~~a total equal to~~)) the amount ((~~allocated~~)) described in WAC 388-513-1380 (6)(b)(i)(A); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

(IV) Any maintenance care for a condominium or cooperative; and

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation listed in WAC 388-513-1380 (7)(a).

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (((~~(6)(b)(I)(A)~~))) (6)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members. Child support received from an absent parent is the child's income;

(g) Incurred medical expenses described in subsection (((~~(3)(b)~~))) (4)(b) not used to reduce excess resources, with the following exceptions:

(i) Private health insurance premiums for MMIP;

(ii) Medicare advantage plan premiums for PACE.

(((~~(5)~~))) (6) The amount allocated to the community spouse may be greater than the amount in subsection (((~~(4)(e)~~))) (5)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(((~~(6)~~))) (7) A client who receives SSI does not use income to participate in the cost of personal care, but does use SSI income to participate in paying costs of board and room. When such a client lives:

(a) At home, the SSI client ((~~retains a maintenance needs amount equal to the following:~~

~~(i) Up to one hundred percent of the one-person Federal Poverty Level (FPL), if the client is:~~

~~(A) Single; or~~

~~(B) Married, and is:~~

~~(I) Not living with the community spouse; or~~

~~(II) Whose spouse is receiving long-term care (LTC) services outside of the home.~~

~~(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES services;~~

~~(iii) Up to the one-person MNIL if the client is living with a community spouse who is not receiving LTC services.~~)) does not participate in the cost of personal care;

(b) In an ((~~EARC, AFH, or AL~~)) enhanced adult residential center (EARC), adult family home (AFH), or assisted living (AL), the SSI client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents;

(ii) Pays the facility for the cost of ((~~room and~~)) board and room. ((~~Room and board~~)) Board and room is the SSI Federal Benefit Rate (FBR) minus fifty-eight dollars and eighty-four cents((~~:~~)); and

(iii) ((~~Retains the remainder of the~~)) Does not participate in the cost of personal care if any income remains.

(((~~(7)~~))) (8) An SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES, PACE, or MMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES, PACE, or MMIP.

(b) In an ((~~ARC,~~)) EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of board and room. (Refer to subsection (11) in this section for allocation of the balance of income remaining over maintenance needs.)

(((~~(8)~~))) (9) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(((~~(9)~~))) (10) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (((~~(6),~~))) (7), (((~~and~~))) (8), and (9);

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (((~~(4)(a)~~))) (5)(a); and

(c) Guardianship fees and administrative costs in subsection (((~~(4)(c)~~))) (5)(c).

(((~~(10)~~))) (11) The client's remaining income after the allocations described in subsections (((~~(4)~~))) (5) through (((~~(8)~~))) (9) is the client's participation in the total cost of care.

WSR 05-23-164
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 23, 2005, 8:41 a.m.]

The Department of Licensing hereby withdraws proposed rule WAC 308-20-120 Written and performance examinations and 308-20-210 Fees, filed with your office on October 18, 2005, as part of WSR 05-21-106.

Andrea C. Archer
Assistant Director

WSR 05-23-165
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 23, 2005, 8:43 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetologist, barbers, manicurists and estheticians; amending WAC 308-20-120 Written and performance examinations and 308-20-210 Fees; and new section WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions.

Hearing Location(s): Valley View Library, 17850 Military Road South, SeaTac, WA 98188, on December 27, 2005, at 11:00 a.m.

Date of Intended Adoption: December 28, 2005.

Submit Written Comments to: Sandra Gonzales, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail sgonzales@dol.wa.gov, fax (360) 570-4957, by December 23, 2005.

Assistance for Persons with Disabilities: Contact Sandra Gonzales by December 23, 2005, TTY (360) 664-8885 or (360) 664-6649.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In anticipation of moving to a national written examination on or after February 1, 2006, the department is proposing the following changes:

New section WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions, provides reciprocity for individuals who are licensed in other jurisdictions.

WAC 308-20-120 Written and performance examinations, adds a subsection that adopts the National-Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations. In addition, on the national examination each question may be worth different points. In keeping with national standards in the way the examination is graded and to provide for reciprocity we are proposing that the minimum passing score for both the written and performance examinations in all practices is a scaled score of seventy-five.

WAC 308-20-210 Fees, the department is removing written examination application and written examination retake fees. These fees will be paid directly to the third-party examiner. However, if an individual applies through reciprocity, as defined in new section WAC 308-20-115, they will pay a license fee.

Reasons Supporting Proposal: Eliminating the written examination application and examination retake fees will still ensure that there is a sufficient level of revenue to maintain a reasonable fund balance and to defray program administration costs as required under RCW 43.24.086. A minimum passing score of a scaled score of seventy-five will be fair and equitable to all examinees and will keep the examinations in line with national standards allowing individuals an opportunity to apply for licensure through reciprocity.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.086.

Statute Being Implemented: RCW 18.16.030.

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

Name of Proponent: Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Trudie Touchette, 405 Black Lake Boulevard, Olympia, WA 98502 (360) 664-6626; Implementation: Rosie McGrew, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-6626; and Enforcement: Susan Colard, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-6626.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Washington State Department of Licensing is not a named agency, therefore, exempt from this provision.

November 23, 2005
Andrea C. Archer
Assistant Director

NEW SECTION

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions. The department shall issue a license to any person who is properly licensed in any state, territory, or possession of the United States, or foreign country if the applicant submits:

(1) Application;

(2) Fee;

(3) Proof that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction;

(4) Provides proof that he or she has passed the director approved examinations with the minimum passing score approved by the director.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-120 Written and performance examinations. (1) The department shall administer or approve the administration of a written and performance license examination. The department may approve written or performance examinations given by department-approved examination providers.

(2) The director adopts the National-Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations required for applicants.

(3) The written and performance examinations for cosmetologist, barber, manicurist and esthetician shall reasonably measure the applicant's knowledge of safe and sanitary practice. ((~~The performance examinations may be divided into skill sections. The overall minimum passing grade for performance examinations shall be seventy-five percent with no section being scored lower than forty percent. If an individual scores lower than forty percent in any one section, the entire performance examination must be retaken. The minimum passing grade for the written examinations shall be seventy-six percent of the total examination questions.~~

~~(3)~~)) (4) The written and performance examinations for instructors shall be constructed to measure the applicant's knowledge of lesson planning and teaching techniques. ((~~The overall minimum passing grade for the performance examination shall be eighty percent. The minimum passing grade for the written examination shall be eighty percent of the total examination questions.~~))

(5) In order to be eligible for licensure, a license applicant must pass both the written and performance examinations in the practice for which they are applying.

(6) The minimum passing score for both the written and performance examinations in all practices is a scaled score of 75.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
((~~Written examination application~~	~~$ 25.00~~
~~Written examination retake~~	~~25.00~~))
Reciprocity license	$ 40.00
Renewal (two-year license)	40.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Instructor:	
((~~Examination application~~	~~30.00~~))
Reciprocity license	40.00
Renewal (two-year license)	40.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Manicurist:	
((~~Written examination application~~	~~25.00~~
~~Written examination retake~~	~~25.00~~))
Reciprocity license	40.00
Renewal (two-year license)	40.00
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Esthetician:	
((~~Written examination application~~	~~25.00~~
~~Written examination retake~~	~~25.00~~))
Reciprocity license	40.00
Renewal (two-year license)	40.00
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Barber:	
((~~Written examination application~~	~~25.00~~
~~Written examination retake~~	~~25.00~~))
Reciprocity license	40.00
Renewal (two-year license)	40.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
School:	
License application	175.00
Renewal (one-year license)	175.00
Late renewal penalty	175.00
Duplicate	15.00
Curriculum review	15.00
Salon/shop:	
License application	50.00

Title of Fee	Fee
Renewal (one-year license)	50.00
Late renewal penalty	50.00
Duplicate license	15.00
Mobile unit:	
License application	50.00
Renewal (one-year license)	50.00
Late renewal penalty	50.00
Duplicate license	15.00
Personal services:	
License application	50.00
Renewal (one-year license)	50.00
Late renewal penalty	50.00
Duplicate license	15.00

WSR 05-23-166
PROPOSED RULES
ATTORNEY GENERAL'S OFFICE
[Filed November 23, 2005, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-16-120.

Title of Rule and Other Identifying Information: Model rules on public records.

Hearing Location(s): General Administration Building, 1st Floor Auditorium, 210 11th Avenue S.W., Olympia, WA, on January 12, 2006, at 6:00 p.m. - 8:00 p.m.

Date of Intended Adoption: January 31, 2006.

Submit Written Comments to: Greg Overstreet, P.O. Box 40100, Olympia, WA 98504-0100, e-mail publicrecords@atg.wa.gov, fax (360) 664-0228, by January 12, 2006.

Assistance for Persons with Disabilities: Contact Shelley Rohr by January 12, 2006, fax (360) 664-0228 or e-mail shelleyr@atg.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the model rules is to provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, RCW 42.17.251 - [42.17].348. The anticipated effect of the model rules is to streamline compliance, standardize best practices throughout the state, and reduce litigation.

Reasons Supporting Proposal: The legislature directed the attorney general to adopt advisory model rules on public records compliance.

Statutory Authority for Adoption: Section 4, Chapter 483, Laws of 2005, amending RCW 42.17.348.

Statute Being Implemented: RCW 42.17.251 - [42.17].348.

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

Name of Proponent: Washington State Attorney General's Office, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Greg Overstreet, 1125 Washington Street S.E., Olympia, WA, (360) 586-4802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The model rules apply only to governmental agencies and not to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Cost-benefit analysis not required for the Attorney General's Office.

November 23, 2005
Greg Overstreet
Special Assistant Attorney General
for Government Accountability

Chapter 44-14 WAC

PUBLIC RECORDS ACT—MODEL RULES

INTRODUCTORY COMMENTS

NEW SECTION

WAC 44-14-00001 Statutory authority and purpose. The legislature directed the attorney general to adopt advisory model rules on public records compliance and to revise them from time to time. RCW 42.17.348 (2) and (3) (section 4 (2) and (3), chapter 483, Laws of 2005). The purpose of the model rules is to provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, RCW 42.17.251 through 42.17.348 ("act"). The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state. The attorney general encourages state and local agencies to adopt the model rules (but not necessarily the comments) by regulation or ordinance.

The act applies to all state agencies and local units of government. These model rules use the term "agency" to refer to either a state or local agency. Upon adoption, each agency would change that term to name itself (such as changing references from "agency" to "city"). To assist state and local agencies considering adopting the model rules, an electronic version of the rules is available on the attorney general's web site, www.atg.wa.gov/records/modelrules.

The model rules are the product of an extensive outreach project. The attorney general held thirteen public forums all across the state to obtain the views of requestors and agencies. Many requestors and agencies also provided detailed written comments that are contained in the rule-making file. The model rules reflect many of the points and concerns presented in those forums.

The model rules provide one approach (or, in some cases, alternate approaches) to processing public records requests. Agencies vary enormously in size, resources, and complexity of requests received. Any "one-size-fits-all" approach in the model rules, therefore, may not be best for requestors and agencies.

NEW SECTION

WAC 44-14-00002 Format of model rules. We are publishing the model rules with comments. The comments have five-digit WAC numbers such as WAC 44-14-05001. The model rules themselves have three-digit WAC numbers such as WAC 44-14-050.

The comments are designed to explain the basis and rationale for the rules themselves as well as provide broader context and legal guidance. The comments contain many citations to statutes, cases, and formal attorney general's opinions to provide guidance to requestors and agencies.

NEW SECTION

WAC 44-14-00003 Model rules and comments are nonbinding. The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules often use the word "should" or "may" to describe what an agency or requestor is encouraged to do. The use of the words "should" or "may" are permissive, not mandatory, and are not intended to create any legal duty.

While the model rules and comments are nonbinding, they should be carefully considered by requestors and agencies. The model rules and comments were adopted after extensive statewide hearings and voluminous comments from a wide variety of interested parties.

NEW SECTION

WAC 44-14-00004 Recodification of the act. On July 1, 2006, the act will be recodified. Chapter 274, Laws of 2005. The act will be known as the "Public Records Act" and will be codified in chapter 42.56 RCW. The exemptions in the act are recodified and grouped together by topic. The recodification does not change substantive law. The model rules provide citations to the current act, chapter 42.17 RCW. Subsequent revisions of the model rules will contain the new citations.

NEW SECTION

WAC 44-14-00005 Training is critical. The act is complicated, and compliance requires training. Training can be the difference between a satisfied requestor and expensive litigation. The attorney general's office strongly encourages agencies to provide thorough and ongoing training to agency staff on public records compliance. All agency employees should receive basic training on public records compliance and records retention; public records officers should receive more intensive training.

NEW SECTION

WAC 44-14-00006 Additional resources. Several web sites provide information on the act. The attorney general office's web site on public records is www.atg.wa.gov/records. The municipal research service center, an entity serving local governments, provides a public records handbook at www.mrsc.org/Publications/prdpub04.pdf. A requestor's organization, the Washington Coalition for Open Government, has materials on its site at www.washington-cog.org.

The Washington State Bar Association is publishing a twenty-two-chapter deskbook on public records in 2006. It will be available at www.wsba.org.

AUTHORITY AND PURPOSE

NEW SECTION

WAC 44-14-010 Authority and purpose. (1) RCW 42.17.260(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained "by the agency." These include electronic records. RCW 42.17.260(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records.

(2) The purpose of these rules is to implement the act. These rules provide information to persons wishing to request access to public records of the (agency) and establish expectations both of requestors and of (agency) staff who are to assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the (agency) will be guided by the provisions of the act describing its purposes and interpretation.

Comments to WAC 44-14-010

NEW SECTION

WAC 44-14-01001 Scope of coverage of Public Records Act. The act applies to an "agency." RCW 42.17.260(1). "'Agency' includes all state agencies and local agencies. 'State agency' includes every state office, department, division, bureau, board, commission, or other state agency. 'Local agency' includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." RCW 42.17.020(1).

A court is not an "agency" subject to the act.[1] Access to court records is governed by court rules and common law. These model rules, therefore, do not address access to court records.

An entity which is not an "agency" can still be subject to the act when it is the functional equivalent of an agency. Courts have applied a four-factor, case-by-case test. The factors are:

(1) Whether the entity performs a government function;

(2) The level of government funding;

(3) The extent of government involvement or regulation; and

(4) Whether the entity was created by the government. Op. Att'y Gen. 2 (2002).[2]

Some agencies, most notably counties, are a collection of separate quasi-autonomous departments which are governed by different elected officials (such as a county assessor and prosecuting attorney). However, the act defines the county as a whole as an "agency" subject to the act. RCW 42.17.020 (1). The act requires an agency to coordinate responses to records requests across departmental lines. RCW 42.17.253 (1) (2005).

Notes: [1] *Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986).

[2] *See also Telford v. Thurston County Bd. of Comm'rs*, 95 Wn. App. 149, 162, 1974 P.2d 886, *review denied*, 138 Wn.2d 1015, 989 P.2d 1143 (1999); Op. Att'y Gen. 5 (1991).

NEW SECTION

WAC 44-14-01002 Requirement that agencies adopt reasonable regulations for public records requests. The act provides: "Agencies shall adopt and enforce reasonable rules and regulations…to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency…. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.17.290. Therefore, an agency must adopt "reasonable" regulations providing for the "fullest assistance" to requestors and the "most timely possible action on requests."

At the same time, an agency's regulations must "protect public records from damage or disorganization" and "prevent excessive interference" with other essential agency functions. Another provision of the act provides that providing public records should not "unreasonably disrupt the operations of the agency." RCW 42.17.270. This provision allows an agency to take reasonable precautions to prevent a requestor from being disrespectful to agency staff.

NEW SECTION

WAC 44-14-01003 Construction and application of act. The act declares: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created." RCW 42.17.251. The act further provides: "…mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society." RCW 42.17.010(11). The act also provides, "Courts shall take into account the policy of (the act) that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.17.340(3).

Because the purpose of the act is to allow people to be informed about governmental decisions (and therefore help keep government accountable) while at the same time being "mindful of the right of individuals to privacy," it should not be used to obtain records containing purely personal information that has absolutely no bearing on the conduct of government.

The act emphasizes three separate times that it must be liberally construed to effect its purpose, which is the disclosure of nonexempt public records. RCW 42.17.010, 42.17.-251, 42.17.920.[1] The act places the burden on the agency of proving a record is not subject to disclosure or that its estimate of time to provide a full response was "reasonable." RCW 42.17.340 (1) and (2). The act also encourages disclosure by awarding a requestor reasonable attorneys fees, costs, and a daily penalty if the agency fails to meet its burden of proving the record is not subject to disclosure or its estimate was not "reasonable." RCW 42.17.340(4).

Note: [1]*See King County v. Sheehan*, 114 Wn. App. 325, 338, 57 P.3d 307 (2002) (referring to the three legislative intent provisions of the act as "the thrice-repeated legislative mandate that exemptions under the Public Records Act are to be narrowly construed.").

AGENCY DESCRIPTION—CONTACT INFORMATION—PUBLIC RECORDS OFFICER

NEW SECTION

WAC 44-14-020 Agency description—Contact information—Public records officer. (1) The agency (describe services provided by agency). The agency's central office is located at (describe). The agency has field offices at (describe, if applicable).

(2) Any person wishing to request access to public records of (agency), or seeking assistance in making such a request should contact the public records officer of the (agency):

Public Records Officer
(Agency)
(Address)
(Telephone number)
(fax number)
(e-mail)

Information is also available at the (agency's) web site at www.(******).

(2) The public records officer will oversee compliance with the act but another agency staff member can process the request. The public records officer and the agency will provide the "fullest assistance" to requestors in making requests for identifiable records under the act, to create and maintain for use by the public and (agency) officials an index to public records of the (agency, if applicable), to ensure that public records are protected from damage or disorganization, and to prevent fulfilling public records requests from causing excessive interference with essential functions of the (agency).

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

Comments to WAC 44-14-020

NEW SECTION

WAC 44-14-02001 Agency must publish its procedures. An agency must publish its public records policies, organizational information, and methods for requestors to obtain public records. RCW 42.17.250(1).[1] A state agency must publish its procedures in the Washington Administrative Code and a local agency must prominently display and make them available at each of its offices. RCW 42.17.250 (1)(a). An agency cannot invoke a procedure if it did not publish it as required. RCW 42.17.250(2).

Note: [1]*See, e.g.*, WAC 44-06-030 (attorney general office's organizational and public records methods statement).

NEW SECTION

WAC 44-14-02002 Public records officers. An agency must appoint a public records officer whose responsibility is to serve as a "point of contact" for members of the public seeking public records. RCW 42.17.253(1). The purpose of this requirement is to provide the public with one point of contact within the agency to make a request. A state agency must provide the public records officer's name and contact information by publishing it in the state register. A state agency is encouraged to provide the public records officer's contact information on its web site. A local agency must publish the public records officer's name and contact information in a way reasonably calculated to provide notice to the public such as posting it on the agency's web site. RCW 42.17.253 (3).

The public records officer is not required to personally fulfill requests for public records. A request can be fulfilled by an agency employee other than the public records officer. If the request is made to the public records officer, but should actually be fulfilled by others in the agency, the public records officer should route the request to the appropriate person(s) in the agency for processing. An agency is not required to hire a new staff member to be the public records officer.

AVAILABILITY OF PUBLIC RECORDS

NEW SECTION

WAC 44-14-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the (agency), (provide hours, e.g., Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays). Records must be inspected at the offices of the (agency).

(2) **Records index.** (*If agency keeps an index.*) There is available for use by members of the public an index of public records, including (describe contents). It may be accessed on-line at (web site address). (If there are multiple indices, describe each and its availability.)

(*If agency is local agency opting out of the index requirement.*) The agency finds that maintaining an index is unduly burdensome and would interfere with agency operations. The requirement would unduly burden or interfere with agency operations in the following ways (specify reasons).

(3) **Organization of records.** The agency shall maintain its records in a reasonably organized manner. The agency shall take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from agency offices without the permission of the public records officer. A variety of records is available on the (agency) web site at (web site address). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the (agency) should make the request in writing on the agency's request form, or by letter, fax, or electronic mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records sent instead of simply being made available for copying, he or she should so indicate and indicate a willingness to pay for the records. Pursuant to section (insert section), standard photocopies will be provided at (amount) cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on-line at (web site address).

(d) The public records officer may accept requests for public records that contain the above information by telephone or in person. If the public records officer accepts such a request he or she will confirm receipt of the information and the substance of the request in writing.

Comments to WAC 44-14-030

NEW SECTION

WAC 44-14-03001 "Public record" defined. Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used, or retained" by an agency.[1]

(1) **Writing.** A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "… handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.17.020(48).

(2) **Relating to the conduct of government.** To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal e-mail sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the e-mail itself is not.[2]

(3) **"Prepared, owned, used, or retained."** A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW 42.17.020(41).

A record can be "used" by an agency, even if the agency does not actually possess the record. If an agency uses a record in its decision-making process it is a "public record."[3] For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision-making process.[4] The agency would be responsible for obtaining the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.[5]

Sometimes agency employees work on agency business from home computers. Because these records were "used" by the agency and relate to agency business, the home-computer documents (which include e-mail) are "public records" because they relate to the "conduct of government." RCW 42.17.020(41). However, the act does not authorize unbridled searches of agency property.[6] If agency property is not subject to unbridled searches, then neither is the home computer of an agency employee. However, because the home-computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where created, should eventually be stored on agency computers. Agencies should ask employees to keep agency-related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work e-mails back to the employee's agency e-mail account. If the agency receives a request for records that are solely on employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.

Notes:

[1] *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 735, 748, 958 P.2d 260 (1998). For records held by the secretary of the senate or chief clerk of the house of representatives, a "public record" is a "legislative record" as defined in RCW 40.14.100. RCW 42.17.020 (41).

[2] *Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 13 P.3d 1104 (2000).

[3] *Concerned Ratepayers v. Public Utility District No. 1*, 138 Wn.2d 950, 958-61, 983 P.2d 635 (1999).

[4] *Id.*

[5] *See* Op. Att'y Gen. 11 (1989), at 4, n.2 ("We do not wish to encourage agencies to avoid the provisions of the public disclosure act by transferring public records to private parties. If a record otherwise meeting the statutory definition were transferred into private hands solely to prevent its public disclosure, we expect courts would take appropriate steps to require the agency to make disclosure or to sanction the responsible public officers.")

[6] *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004).

NEW SECTION

WAC 44-14-03002 Times for inspection and copying of records. An agency must make records available for inspection and copying during the "customary office hours of the agency." RCW 42.17.280. If the agency is very small and does not have customary office hours of at least thirty hours per week, the records must be available from 9:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m. However, the agency and requestor can make mutually agreeable arrangements for the times of inspection and copying.

NEW SECTION

WAC 44-14-03003 Index of records. State and local agencies are required by RCW 42.17.260 to provide an index for certain categories of records. An agency is not required to index every record it creates. Since agencies maintain records in a wide variety of ways, agency indices will also vary. An agency cannot rely on or cite to a public record unless it was indexed or made available to the parties affected by it. RCW 42.17.260(6). An agency should post its index on its web site.

The index requirements differ for state and local agencies.

A state agency must index only two categories of records:

(1) All records, if any, issued before July 1, 1990 for which the agency has maintained an index; and

(2) Final orders, declaratory orders, and interpretative statements of policy issued before June 30, 1990. RCW 42.17.260(5).

A state agency must adopt a rule governing its index.

A local agency may opt out of the indexing requirement if it issues an order or adopts an ordinance specifying the reasons why doing so would be "unduly burdensome" or "interfere with agency operations." RCW 42.17.260(4). To lawfully opt out of the index requirement, a local agency must actually issue such an order or adopt an ordinance specifying the reasons it cannot maintain an index.

The index requirements of the act were enacted in 1972 when agencies had far fewer records and an index was easier to maintain. However, technology allows agencies to map out, archive, and then electronically search for electronic documents. Agency resources vary greatly so not every agency can afford to utilize this technology. However, agencies should explore the feasibility of electronic indexing and retrieval to assist both the agency and requestor in locating public records.

NEW SECTION

WAC 44-14-03004 Organization of records. An agency must "protect records from damage or disorganization." RCW 42.17.290. An agency owns public records and must maintain custody of them. RCW 40.14.020; chapter 434-615 WAC. Therefore, an agency should not allow a requestor to take originals of agency records out of the agency's office. An agency may send originals to a reputable commercial copying center to fulfill a records request if the agency takes reasonable precautions to protect the records. See WAC 44-14-07001(5).

The legislature encourages agencies to electronically store and provide public records:

Broad access to state and local government records and information has potential for expanding citizen access to that information and for providing government services. Electronic methods of locating and transferring information can improve linkages between and among citizens . . . and governments. . . .

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.

RCW 43.105.250. As more fully described in WAC 44-14-04023, an agency fulfills its obligation to provide "access" to a public record by providing a requestor with a link to an agency web site containing an electronic copy of that record. Agencies are encouraged to do so.

NEW SECTION

WAC 44-14-03005 Retention of records. An agency is not required to retain every record it ever created or used. Retention schedules determine when records can lawfully be destroyed.[1] The secretary of state adopts retention schedules for general classes of records for state and local agencies. See chapter 434-615 WAC. Individual agencies are required to adopt retention schedules for their own records. The retention schedule for local agencies is available at www.secstate.wa.gov/archives/gs.aspx.

Retention schedules vary based on the content of the record. For example, documents with no value such as internal meeting scheduling e-mails can be destroyed instantly but documents such as periodic accounting reports must be kept for a period of years. Because different kinds of records must be retained for different periods of time, an agency is prohibited from automatically deleting all e-mails after a short period of time (such as thirty days). While many of the e-mails could be destroyed instantly, many others must be retained for several years. Indiscriminate automatic deletion after a short period prevents an agency from complying with its retention duties and its public records duties. An agency should have a retention policy in which employees save retainable documents and delete nonretainable ones. An agency is strongly encouraged to train employees on retention schedules.

The lawful destruction of public records is governed by retention schedules. The unlawful destruction of public records can be a crime. RCW 40.16.010 and 40.16.020.

An agency is prohibited from destroying a public record, even if it is about to be lawfully destroyed under a retention schedule, if a public records request has been made for that record. RCW 42.17.290. The agency is required to retain the record until the record request has been resolved. An exception is for certain portions of a state employee's personnel file. RCW 42.17.295.

Note: [1]An agency can be found to violate the act and be subject to the attorneys' fees and penalty provision if it prematurely destroys a requested record. See *Yacobellis v. City of Bellingham*, 55 Wn. App. 706, 780 P.2d 272 (1989).

NEW SECTION

WAC 44-14-03006 Form of requests. There is no statutorily required format for a valid public records request.[1] A request can be sent in by mail. RCW 42.17.290. A request can also be made by e-mail, fax, or verbally. A request should be made to the agency's public records officer. An agency may prescribe means of requests in its rules. RCW 42.17.250 and 42.17.260(1); RCW 42.17.060 (relating to certain state agencies); RCW 34.05.220 (authority for all state agencies). An agency is encouraged to make its public records request form available on its web site.

Verbal requests may be allowed but are problematic. A verbal request does not memorialize the exact records sought and therefore, prevents a requestor or agency from later proving what was included in the request. Furthermore, as described in WAC 44-14-05003(1), a requestor must provide the agency with reasonable notice that the request is for public records; verbal requests, especially to agency staff other than the public records officer, may not provide the agency with the required reasonable notice. Therefore, requestors are strongly encouraged to make written requests. If an agency receives a verbal request, the agency staff person receiving it should immediately reduce it to writing and then verify in writing with the requestor that it correctly memorializes the request.

An agency should have a public records request form. An agency request form should ask the requestor whether he or she seeks to inspect the records, receive a copy of them, or to inspect the records first and then consider selecting records to copy. An agency request form should recite that inspection of records is free and provide the per-page charge for standard photocopies.

An agency request form should require the requestor to provide contact information so the agency can communicate with the requestor to, for example, clarify the request, inform the requestor that the records are available, or provide an explanation of an exemption. Contact information such as a name, phone number, and address or e-mail should be provided. Requestors should provide an e-mail address because it is an efficient means of communication and creates a permanent record. An agency should not require a requestor to provide a driver's license number, date of birth, or photo identification. This information is not necessary for the agency to contact the requestor and requiring it might intimidate some requestors.

An agency may ask a requestor to prioritize the records he or she is requesting so that the most important records are provided first. An agency is not required to ask for prioritization, and a requestor is not required to provide it.

An agency cannot require the requestor to disclose the purpose of the request with two exceptions. RCW 42.17.270. First, if the request is for a list of individuals, an agency may ask the requestor if he or she intends to use the records for a commercial purpose and intends to directly contact or personally affect the individuals named in a list.[2] An agency should specify on its request form that the agency is not required to provide public records consisting of a list of individuals for a commercial use. RCW 42.17.260(9).

Second, an agency may seek information sufficient to allow it to determine if another statute prohibits disclosure. For example, some statutes allow an agency to disclose a record only to a claimant for benefits or his or her representative. In such cases, an agency is authorized to ask the requestor if he or she fits this criterion and treat him or her differently than someone who does not.

An agency is not authorized to require a requestor to indemnify the agency. Op. Att'y Gen. 12 (1988).[3]

Notes: [1]*Hangartner v. City of Seattle*, 151 Wn.2d 439, 447, 90 P.3d 26 (2004) ("there is no official format for a valid PDA request.").

[2]Op. Att'y Gen. 12 (1988), at 11; Op. Att'y Gen. 2 (1998), at 4.

[3]An agency and its employees are immune from any liability for acting in good faith to fulfill a public records request so an agency has little need for an indemnification clause. RCW 42.17.258. Requiring a requestor to indemnify an agency inhibits some requestors from exercising their right to request public records. Op. Att'y Gen. 12 (1988), at 11.

PROCESSING OF PUBLIC RECORDS REQUESTS—GENERAL

NEW SECTION

WAC 44-14-040 Processing of public records requests—general. (1) **Providing "fullest assistance."** The agency is charged by statute with providing the "fullest assistance" to requestors. The public records officer shall process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer shall do one or more of the following:

(a) Make the records available for inspection or copying (or, if so requested and payment for the records is made or terms of payment are agreed upon, send the records to the requestor);

(b) Provide a reasonable estimate of when records will be available; or

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available.

(3) **Consequences of failure to respond.** If the public records officer does not respond in writing within five working days of receipt of the request for disclosure, the request may be deemed denied and the requestor may obtain internal agency review or seek judicial review of the denial. See WAC 44-14-080 (2) and (4).

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall redact the exempt portions, provide the remaining portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) The (agency) shall provide space to inspect public records and provide staff assistance to make any requested copies. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes to have copied.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. If the requestor or a representative of the requestor fails to make arrangements to claim or review the records within the thirty-day period, the agency may close the request and refile the assembled records. A subsequent request for the same or almost identical records can be processed last.

(7) **Providing copies of records.** After inspection is complete, the public records officer shall make the requested copies.

(8) **Large requests.** When the request is for a large number of records, the public records officer may provide access for inspection and copying in installments, if the officer reasonably determines that it would be practical to provide the records in that way. If, within a reasonable time, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, or when the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer shall close the request and indicate to the requestor that the (agency) has completed a diligent search for the requested records.

(10) **Later discovered documents.** If, after the (agency) has informed the requestor that it has provided all available records, the (agency) becomes aware of additional responsive documents existing at the time of the request, it shall

promptly inform the requestor of the additional documents and provide them on an expedited basis, along with a written explanation of why they were not previously located and provided.

Comments on WAC 44-14-040

NEW SECTION

WAC 44-14-04001 Introduction. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records.[1] A requestor has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.[2]

Requestors should keep in mind that all agencies have essential functions in addition to providing public records. Agencies also have greatly differing resources. The act recognizes that agency public records procedures should prevent "excessive interference" with the other "essential functions" of the agency. RCW 42.17.290. Therefore, while providing public records is an essential function of an agency, it is not required to abandon its other, nonpublic records functions. Agencies without a full-time public records officer may assign staff part-time to fulfill records requests, provided the agency is providing the "fullest assistance" and the "most timely possible" action on the request. The proper level of staffing for public records requests will vary among agencies, considering the complexity and number of requests to that agency, agency resources, and the agency's other functions.

Since the burden of proof is on an agency to prove its estimate of time to provide a full response is "reasonable" (RCW 42.17.340(2)), an agency should be prepared to explain how its response to a request provided the requestor the "fullest assistance."

The act began as an initiative in 1972. Requestors and agencies should bear in mind that many of the technologies contemplated by the act are several decades old. For example, the act's original reference to a "record" contemplated a piece of paper, not modern electronic records.[3] Similarly, the act's focus on charging for printed photocopies of paper records did not contemplate agencies providing records electronically.

Agencies are encouraged to use technology to provide public records more quickly and, if possible, less expensively. It is permissible to "over comply" with the act. Doing so often saves the agency time and money in the long run, improves relations with the public, and prevents litigation. For example, agencies are encouraged to post many nonexempt records of broad public interest on the internet. This may result in fewer requests for public records. See RCW 43.105.270 (state agencies encouraged to post frequently sought documents on the internet).

Notes: [1] RCW 42.17.260(1) (agency "shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions" listed in the act or other statute).

[2] *See* RCW 42.17.270 ("identifiable record" requirement); RCW 42.17.300 (2005) ("claim or review" requirement); RCW 42.17.290 ("agency may prevent excessive interference with other essential agency functions").

[3] However, now the act clearly contemplates electronic records. *See* RCW 42.17.020(48) (definition of "writing").

NEW SECTION

WAC 44-14-04002 Obligations of requestors. (1) **Reasonable notice that request is for public records.** A requestor must give an agency reasonable notice that the request is being made pursuant to the act.[1] While the request need not cite or name the act, it must alert the agency that it is a request for public records. A request using the terms "public records," "public disclosure," "FOIA," or "Freedom of Information Act" (the terms commonly used for federal records requests) should provide an agency with reasonable notice in most cases. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.

(2) **Identifiable record.** A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. RCW 42.17.270 and 42.17.340(1). An "identifiable record" is one that agency staff can reasonably locate.[2] The act does not allow a requestor to search through agency files for records which cannot be reasonably identified or described to the agency.[3] However, a requestor is not required to identify the exact record he or she seeks. For example, if a requestor requested an agency's "2001 budget," but the agency only had a 2000-2002 budget, the requestor made a request for an identifiable record.[4] The agency must provide the requestor the "fullest assistance."

An "identifiable record" is not a request for "information" in general, but rather for a record that can be reasonably located.[5] For example, asking "what policies" an agency has for handling discrimination complaints is merely a request for "information."[6] A request to inspect or copy an agency's policies and procedures for handling discrimination complaints would be a request for an "identifiable record."

Public records requests are not interrogatories. An agency is not required to conduct legal research for a requestor.[7] A request for "any law that allows the county to impose taxes on me" is not a request for an identifiable record. Conversely, a request for "all records discussing the passage of this year's tax increase on real property" is a request for an "identifiable record."

When a request uses an inexact phrase such as all records "relating to" a topic (such as "all records relating to the property tax increase"), the agency may interpret the request to be for records which directly and fairly address the topic. When an agency receives a "relating to" or similar request, it should seek to clarify the request with the requestor.

(3) **"Overbroad" requests.** An agency cannot "deny a request for identifiable records based solely on the basis that the request is overbroad." RCW 42.17.270 (2005). If the request is not for identifiable records or is otherwise not proper, the request can still be denied. When confronted with a large request that is unclear, an agency should seek clarification.

Notes: [1] *Wood v. Lowe*, 102 Wn. App. 872, 10 P.3d 494 (2000).

[2] *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d 1099

(1999) ("identifiable record" requirement is satisfied when there is a "reasonable description" of the record "enabling the government employee to locate the requested records.").

[3]*Limstrom v. Ladenburg*, 136 Wn.2d 595, 604, n.3, 963 P.2d 869 (1998), *appeal after remand*, 110 Wn. App. 133, 39 P.3d 351 (2002).

[4]*Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, n.4, 59 P.3d 109 (2002).

[5]*Bonamy*, 92 Wn. App. at 409.

[6]*Id*.

[7]*See Limstrom*, 136 Wn.2d at 604, n.2 (act does not require "an agency to go outside its own records and resources to try to identify or locate the record requested."); *Bonamy*, 92 Wn. App. at 409 (act "does not require agencies to research or explain public records, but only to make those records accessible to the public.").

NEW SECTION

WAC 44-14-04003 Responsibilities of agencies in processing requests. (1) **Similar treatment and purpose of the request.** The act provides: "Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request" (except to determine if the request is for a "commercial use or would violate another statute prohibiting disclosure"). RCW 42.17.270.[1] The act also requires an agency to take the "most timely possible action on requests" and make records "promptly available." RCW 42.17.290 and 42.17.270. However, treating requestors similarly does not mean that agencies must process requests strictly in the order received because this might not be providing the "most timely possible action" for all requests. A relatively simple request need not wait for a long period of time while a much larger request is being fulfilled. Agencies are encouraged to be flexible and process as many requests as possible even if they are out of order.[2]

An agency cannot require a requestor to state the purpose of the request (with limited exceptions). RCW 42.17.270. However, in an effort to better understand the request and provide all responsive records, the agency can inquire about the purpose of the request. The requestor is not required to answer the agency's inquiry (with limited exceptions as previously noted).

(2) **Provide "fullest assistance" and "most timely possible action."** The act requires agency procedures to provide the "fullest assistance" to a requestor. RCW 42.17.290. The "fullest assistance" requirement should guide agencies when a specific question is not directly addressed by the act or model rules. "Fullest assistance" can take many forms. In general, an agency should devote sufficient staff time to processing records requests, consistent with the act's requirement that fulfilling requests should not be an "excessive interference" with the agency's "other essential functions." RCW 42.17.290. "Fullest assistance" means the agency should recognize that fulfilling public records requests is one of the agency's duties, along with its others.

The act also requires an agency to provide the "most timely possible action on requests." RCW 42.17.290. This provision should also guide agencies in all aspects of public records compliance. It should be noted that this provision requires the most timely "possible" action on requests. This provision recognizes that an agency is not always capable of fulfilling a request as quickly as the requestor would like.

(3) **Communicate with requestor.** Communication is usually the key to a smooth public records process for both requestors and agencies. Clear requests for a small number of records usually do not require predelivery communication with the requestor. However, when an agency receives a large or unclear request, the agency should communicate with the requestor to clarify the request and explain the public records process. The model rules and comments should help explain the process to requestors.

For large requests, the agency may ask the requestor to prioritize the request so that he or she receives the most important records first. If feasible, the agency should provide periodic updates to the requestor of the progress of the request. Similarly, the requestor should periodically communicate with the agency and promptly answer any clarification questions. Sometimes a requestor finds the records he or she is seeking at the beginning of a request. If so, the requestor should communicate with the agency that the requested records have been provided and that he or she is canceling the remainder of the request. If the requestor's cancellation communication is not in writing, the agency should confirm it in writing

(4) **No duty to create records.** An agency is not obligated to create a new record to satisfy a records request.[3] However, sometimes it is easier for an agency to create a record than find itself in a controversary about whether the request requires the creation of a new record. The decision to create a new record is left to the discretion of the agency.

(5) **Provide a reasonable estimate of the time to fully respond.** Unless it is providing the records or claiming an exemption from disclosure within the five-business day period, an agency must provide a reasonable estimate of the time it will take to fully respond to the request. RCW 42.17.320. Fully responding can mean processing the request (assembling records, redacting, preparing a witholding index, or notifying third parties named in the records who might seek an injunction against disclosure) or determining if the records are exempt from disclosure.

An estimate must be "reasonable." The act provides a requestor a quick and simple method of challenging the reasonableness of an agency's estimate. RCW 42.17.340(2). See WAC 44-14-08008(2). The burden of proof is on the agency to prove its estimate is "reasonable." RCW 42.17.340 (2).

To provide a "reasonable" estimate, an agency should not use the same estimate for every request. An agency should roughly calculate the time it will take to respond to the request and send estimates of varying lengths, as appropriate. Some very large requests can legitimately take months or longer to provide. There is no standard amount of time for fulfilling a request so reasonable estimates should vary.

Some agencies send form letters with thirty-day estimates to all requestors, no matter the size or complexity of the request. Form letter thirty-day estimates are almost never "reasonable" because an agency, which has the burden of proof, could not prove that every single request it receives would take the same thirty-day period.

In order to avoid unnecessary litigation over the reasonableness of an estimate, an agency should briefly explain to the requestor the basis for the estimate in the initial response. The explanation need not be elaborate but should allow the requestor to make a threshold determination of whether he or she should question that estimate further or has a basis to seek judicial review of the reasonableness of the estimate.

An agency should either fulfill the request within the estimated time or, if warranted, communicate with the requestor about clarifications or the need for a revised estimate. An agency should not ignore a request and then continuously send extended estimates. Routine extensions with little or no action to fulfill the request would show that the previous estimates probably were not "reasonable." Extended estimates are appropriate when the circumstances have changed (such as an increase in other requests or discovering that the request will require extensive redaction). An estimate can be revised when appropriate, but unwarranted serial extensions have the effect of denying a requestor access to public records.

(6) **Seek clarification of a request or additional time.** An agency may seek a clarification of an "unclear" request. RCW 42.17.320. An agency can only seek a clarification when the request is objectively "unclear." Seeking a "clarification" of an objectively clear request delays access to public records.

If the requestor fails to clarify an unclear request, the agency need not respond to it further. RCW 42.17.320. If the requestor does not respond to the agency's request for a clarification within thirty days of the agency's request, the agency may consider the request abandoned. If the agency considers the request abandoned, it should send a closing letter to the requestor.

An agency may take additional time to provide the records or deny the request if it is awaiting a clarification. RCW 42.17.320. After providing the initial response and perhaps even beginning to assemble the records, an agency might discover it needs to clarify a request and is allowed to do so. A clarification could also affect a reasonable estimate.

(7) **Preserving requested records.** If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. RCW 42.17.290.[4] Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule.

(8) **Searching for records.** An agency must conduct an objectively reasonable search for responsive records. A requestor is not required to "ferret out" records on his or her own.[5] A reasonable agency search usually begins with the public records officer for the agency or a records coordinator for a department of the agency deciding where the records are likely to be and who is likely to know where they are. One of the most important parts of an adequate search is to decide how wide the search will be. If the agency is small, it might be appropriate to ask all agency employees if they have responsive records. If the agency is larger, the agency may choose only to ask the staff of the department or departments of an agency most likely to have the records. For example, a request for records showing or discussing payments on a public works project initially might be directed to all staff in the finance and public works departments if those departments are deemed most likely to have the responsive documents, even though other departments may have copies or alternative versions of the same documents. However, the other departments that may have documents should be instructed to preserve their records in case they are later deemed to be necessary to respond to the request. The agency could notify the requestor of which departments are being surveyed for the documents so the requestor may suggest that to other departments. It is better to be over inclusive rather than under inclusive when deciding which staff should be contacted, but not everyone in an agency needs to be asked if there is no reason to believe he or she has responsive records. An e-mail to staff selected as most likely to have responsive records is usually sufficient. Such an e-mail also allows an agency to document whom it asked for records.

Agency policies should require staff to promptly respond to inquiries about responsive records from the public records officer. Agency staff must provide the "fullest assistance" to requestors and replying to inquiries from the public records officer about the existence of records is one way to do so.

After seemingly responsive records are located, an agency should take reasonable steps to narrow down the number of records to those which are responsive. In some cases, an agency might find it helpful to consult with the requestor on the scope of the documents to be assembled. An agency cannot "bury" a requestor with nonresponsive documents. However, an agency is allowed to provide arguably, but not clearly, responsive records to allow the requestor to select the ones he or she wants, particularly if the requestor is unable or unwilling to help narrow the scope of the documents.

(9) **Expiration of reasonable estimate.** An agency can provide a record within the time provided in its reasonable estimate or can communicate with the requestor to obtain additional time to fulfill the request based on specified criteria. Unless the agency properly obtains additional time to fulfill the request, the agency is obligated to provide the record within the reasonable estimate period. Failure to do so is a denial of access to the record.

(10) **Notice to affected third parties.** Sometimes an agency decides it must release all or a part of public record affecting a third party. The third party can file an action to obtain an injunction to prevent an agency from disclosing it, but the third party must prove the record or portion of it is exempt from disclosure.[6] RCW 42.17.330.

The act provides that before releasing a record an agency may, at its "option," provide notice to a person named in a public record or to whom the record specifically pertains. RCW 42.17.330. This would include all of those whose identity could reasonably be ascertained in the record and who might have a reason to seek to prevent the release of the record. An agency has wide discretion to decide whom to notify or not notify. First, an agency has the "option" to notify or not. RCW 42.17.330. Second, an agency cannot be held liable for its failure to notify enough people under the act. RCW 42.17.258. However, if an agency had a contractual obligation to provide notice of a request but failed to do so, the agency might lose the immunity provided by RCW

42.17.258 because breaching the agreement probably is not a "good faith" attempt to comply with the act.

The standard notice is ten days. More notice might be appropriate in some cases, such as when numerous notices are required, but every additional day of notice is another day the potentially disclosable record is being withheld. When it provides a notice, the agency should include the notice period in the "reasonable estimate" it provides to requestors.

The notice informs the third party that release will occur on the stated date unless he or she obtains an order from a court enjoining release. The requestor has an interest in any legal action to prevent the disclosure of the records he or she requested. Therefore, the agency's notice should inform the third party that he or she should name the requestor as a party to any action to enjoin disclosure. If an injunctive action is filed, the third party or agency should name the requestor as a party or, at a minimum, must inform the requestor of the action to allow the requestor to intervene.

Notes: [1]*See also* Op. Att'y Gen. 2 (1988).

[2]While an agency can fulfill requests out of order, an agency is not allowed to ignore a large request while it is exclusively fulfilling smaller requests. The agency should strike a balance between fulfilling small and large requests.

[3]*Smith v. Okanogan County*, 100 Wn. App. 7, 14, 994 P.2d 857 (2000).

[4]An exception is some state-agency employee personnel records. RCW 42.17.295.

[5]*Daines v. Spokane County*, 111 Wn. App. 342, 349, 44 P.3d 909 (2002) ("an applicant need not exhaust his or her own ingenuity to 'ferret out' records through some combination of 'intuition and diligent research'").

[6]The agency holding the record can also file a Section 330 injunctive action to establish that it is not required to release the record or portion of it.

Before sending a notice, an agency should have a reasonable belief that the record is arguably exempt. Notices to affected third parties when the records could not reasonably be considered exempt might have the effect of unreasonably delaying the requestor's access to a disclosable record.

NEW SECTION

WAC 44-14-05004 Responsibilities of agency in providing records. (1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When it does so, an agency should also provide the requestor a written cover letter or e-mail forwarding the records briefly describing the records provided and informing the requestor that the request has been closed. See WAC 44-14-05026. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or e-mail might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests to frequent requestors.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so he or she can have it for the council meeting. However, an agency is not required to provide a record sooner than five business days. RCW 42.17.320.

(2) **Means of providing access.** An agency must make nonexempt public records "available" for inspection or provide a copy. RCW 42.17.270. An agency is only required to make records "available" and has no duty to explain the meaning of public records.[1] Making records available is often called "access." The model rules use the term "access" to describe an agency making records available.

Access to a public record can be achieved by allowing inspection of the record, providing a copy, or posting the record on the agency's web site and assisting the requestor in finding it (if necessary). The requestor can specify which method of access (or combination, such as inspection and then copying) he or she prefers. Different processes apply to requests for inspection versus copying (such as copy charges) so an agency should clarify with a requestor whether he or she seeks to inspect or copy a public record.

An agency can provide access to a public record by posting it on its web site. If requested, an agency should provide reasonable assistance to a requestor in finding a public record posted on its web site. If the requestor does not have internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal at the agency open to the public. An agency is not required to do so. Despite the availability of the record on the agency's web site, a requestor can still make a public records request and obtain a copy of the record by paying the appropriate per-page copying charge for a record.

(3) **Providing records in installments.** The act now provides that an agency must provide records "if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." RCW 42.17.270 (2005). The purpose of this provision is to allow requestors to obtain records in batches as they are assembled and to allow agencies to provide records in logical batches. The provision is also designed to allow an agency to only assemble the first installment and then see if the requestor claims or reviews it before assembling the next installments.

Not all requests should be provided in installments. For example, a request for a small number of documents which are located at nearly the same time should be provided all at once. Installments are useful for large requests when, for example, an agency can provide the first box of records as an installment. An agency has wide discretion to determine when providing records in installments is "applicable." However, an agency cannot use installments to delay access by, for example, calling a small number of documents an "installment" and sending out separate notifications for each one. The agency must provide the "fullest assistance" and the "most timely possible action on requests." RCW 42.17.290.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

Does not have the record;

Fails to respond to a request;

Claims an exemption of the entire record or a portion of it; or

Does not provide the record after the reasonable estimate expires without the agency seeking additional time to provide the record.

(a) **When the agency does not have the record.** An agency is only required to provide access to public records it has or has used.[2] An agency is not required to create a public record in response to a request. See WAC 44-14-04009.

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency, the first agency cannot respond to the request by telling the requestor to obtain the record from the second agency. Instead, an agency must provide access to a record it holds regardless of its availability from another agency.[3]

An agency is not required to provide access to records that were not requested. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they were never asked for.

(b) **Claiming exemptions.**

(i) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW 42.17.310(2). There are a few exceptions.[4] Withholding an entire record because only a portion of it is exempt violates the act.[5] Some records are almost entirely exempt but small portions remain nonexempt. For example, legal advice in a memorandum from an attorney to a client is exempt from disclosure under the attorney-client privilege. See WAC 44-14-06004. The body of the memorandum containing the legal advice could be redacted. However, except in the rare circumstance where their identity is exempt, the "to" and "from" information is not typically exempt and generally should be disclosed.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW 42.17.310(2). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency must provide the record with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. An agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. Electronic redactions on computer records are not always secure so marking or masking a paper copy and recopying may be the best method for redacting.

(ii) **Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW 42.17.310(4). The brief explanation should cite the statute the agency claims grant an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding index. It identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt).[6] The withholding index need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

(5) **Notifying requestor that records are available.** If the requestor sought to inspect the records, the agency should notify him or her that the entire request or an installment are available for inspection and ask the requestor to contact the agency to arrange for a mutually agreeable time for inspection.[7] The notification should recite that if the requestor fails to make arrangements to inspect or copy the records within thirty days of the date of the notification that the agency will close the request and refile the records. See WAC 44-14-05024. An agency might consider on a case-by-case basis sending the notification by certified mail to document that the requestor received it.

If the requestor sought copies, the agency should notify him or her of the projected costs and whether a copying deposit is required before the copies will be made. The notification can be verbal to provide the most timely possible response.

(6) **Documenting compliance.** An agency should have a process to identify which records were provided to a requestor and the date of production. In some cases, an agency may wish to number-stamp or number-label paper records provided to a requestor to document which records were provided. The agency could also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided. However, the agency should balance the benefits of stamping or labeling the documents and making extra copies against the costs and burdens of doing so.

Memorializing which documents were offered for inspection is usually impractical. An agency might consider documenting which records were provided for inspection by making a rough list of them.

Notes:

[1] *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d 1099 (1999).

[2] *Sperr v. City of Spokane*, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

[3] *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132, 580 P.2d 246 (1978).

[4] The two main exceptions to the redaction requirement are state "tax information" (RCW 82.32.330 (1)(c)) and law enforcement case files in active cases (*Newman v. King County*, 133 Wn.2d 565, 574, 947 P.2d 712 (1997). Neither of these two kinds of records must be redacted but rather may be withheld in their entirety.

[5] *Seattle Fire Fighters Union Local No. 27 v. Hollister*, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987).

[6]*Progressive Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994) ("PAWS II").

[7]For smaller requests, the agency might simply provide them with the initial response or earlier so no notification is necessary.

NEW SECTION

WAC 44-14-04005 Inspection records. (1) **Obligation of requestor to claim or review records.** After the agency notifies the requestor that the records or an installment of them are ready for inspection or copying, the requestor must claim or review the records or the installment. RCW 42.17.300 (2005). "Claim or review" means making arrangements to review or copy the entire request or an installment. An agency should provide the requestor thirty days to make arrangements to claim or review the records.[1] See WAC 44-14-05024. If the requestor cannot claim or review the records him or herself, a representative may do so within the thirty-day period.

If a requestor fails to claim or review the records or an installment after the expiration of thirty days, an agency is authorized to stop assembling the remainder of the records or making copies. RCW 42.17.300 (2005). If the request is abandoned, the agency is no longer bound by the records retention requirements of the act prohibiting the scheduled destruction of a requested record. RCW 42.17.290.

If a requestor fails to claim or review the records or any installment of them within the thirty-day notification period, the agency may close the request and refile the records. If a requestor who has failed to claim or review the records then requests the same or almost identical records again, the agency, which has the flexibility to prioritize its responses to be most efficient to all requestors, can process the second request for the now-returned records last.

(2) **Time, place, and conditions for inspection.** Inspection should occur at a time mutually agreed (within reason) by the agency and requestor. An agency should not limit the time for inspection to times in which the requestor is unavailable. Requestors cannot dictate unusual times for inspection. The agency is only required to allow inspection during the agency's customary office hours. RCW 42.17.280. Often an agency will provide the records in a conference room or other office area.

The inspection of records cannot create "excessive interference" with the other "essential functions" of the agency. RCW 42.17.290. Similarly, copying records at agency facilities cannot "unreasonably disrupt" the operations of the agency. RCW 42.17.270.

An agency may have an agency employee observe the inspection of records to ensure they are not destroyed or disorganized. RCW 42.17.290. A requestor cannot alter, mark on, or destroy an original record during inspection. To select a record for copying during an inspection, a requestor must use a nonpermanent method such as a removable adhesive note or paper clip.

Inspection times can be broken down into reasonable segments such as half days. However, inspection times cannot be broken down into unreasonable segments to either harass the agency or delay access to the timely inspection of records.

Note: [1]*See, e.g.*, WAC 296-06-120 (department of labor and industries provides thirty days to claim or review records).

NEW SECTION

WAC 44-14-04006 Closing request and documenting compliance. (1) **Fulfilling request and closing letter.** A records request has been fulfilled and can be closed when a requestor has inspected all the requested records, all copies have been provided, a web link has been provided (with assistance from the agency in finding it, if necessary), an objectively unclear request has not been clarified, a request or installment has not been claimed or reviewed, or the requestor cancels the request. An agency should provide a closing letter stating the scope of the request and memorializing the outcome of the request. The outcome described in the closing letter might be that the requestor inspected records, copies were provided (with the number range of the stamped or labeled records, if applicable), the agency sent the requestor the web link, the requestor failed to clarify the request, the requestor failed to claim or review the records within thirty days, or the requestor canceled the request. The closing letter should also ask the requestor to promptly contact the agency if he or she believes additional responsive records have not been provided.

(2) **Returning assembled records.** An agency is not required to keep assembled records set aside indefinitely. This would "unreasonably disrupt" the operations of the agency. RCW 42.17.270. After a request has been closed, an agency should return the assembled records to their original locations. Once returned, the records are no longer subject to the prohibition on destroying records scheduled for destruction under the agency's retention schedule. RCW 42.17.290.

(3) **Retain copy of records provided.** In some cases, it may be wise for the agency to keep a separate copy of the records it copied and provided in response to a request. This allows the agency to document what was provided. A growing number of requests are for a copy of the records provided to another requestor, which can easily be fulfilled if the agency retains a copy of the records provided to the first requestor. The copy of the records provided should be retained for a period of time consistent with the agencies retention schedules for documents with legal value.

NEW SECTION

WAC 44-14-04007 Later-discovered records. An agency has no obligation to search for records responsive to a closed request. Sometimes an agency discovers responsive records after a request has been closed. An agency should provide the later-discovered records to the requestor.

PROCESSING OF PUBLIC RECORDS REQUESTS—ELECTRONIC RECORDS

NEW SECTION

WAC 44-14-050 Processing of public records requests—Electronic records. (1) **General.** The process for requesting electronic records is the same as for requesting

paper records, see WAC 44-14-040, with the exceptions set forth in this section.

(2) **Providing electronic records.** The public records officer may provide electronic public records either in an electronic format or by reducing the electronic records to a paper format.

(3) **Customized access to data bases.**

(a) The (agency) is not required to create a public record, create a data base or reformat or alter a data base pursuant to a requestor's search criteria in order to produce a record in a manner not maintained by the (agency) for its business purposes. The (agency) is not required to write code to respond to a public records request. The (agency) will not reconstruct a record in an electronic format if it is no longer retained in that format. The (agency) will not provide a copy of software programs or data retrieval systems it does not own and/or for which it has signed license agreements restricting the requested customized access, or provide other proprietary information protected by trade secret or other laws governing proprietary information.

(b) However, the (agency) may, in providing assistance to the requestor, choose to reformat or otherwise customize existing electronic records in a data base in order to respond to the information request. The process for customized access is provided in (c) through (f) of this subsection.

(c) In determining whether to provide such customized access to a data base, the agency will consider the following nonexclusive list of factors:

(i) The impact on staff including programming time and effort;

(ii) The (agency's) resources including specific appropriations provided to the (agency) to conduct customized programming;

(iii) The (agency's) software search capabilities;

(iv) The (agency's) ability to electronically redact or mask electronic information that is not disclosable;

(v) The (agency's) ability to respond to similar requests from other requestors;

(vi) The impact on other programming needs and data base access needs for the (agency) and the prevention of interference with other essential functions;

(vii) The need to maintain the security and integrity of the records and software including information such as source codes, security passwords, software applications and other information described and exempted from disclosure in RCW 42.17.310 (1)(h) and (ddd);

(viii) The need, if any, and ability to notify individuals referenced in the data base;

(ix) The number of data base programming requests from this requestor and/or programming time needed to respond;

(x) The alternatives to providing customized access to the requestor; and

(xi) The overall cost of such customized access.

(d) The (agency) may limit the number of customized access requests an individual may make per year, or the number of programming hours it will devote to a request.

(e) If the public records officer and the requestor agree that customized access is a reasonable means of providing access to the information requested by which the agency can provide such access given ((c) and (d) of this subsection), then, pursuant to RCW 43.105.280, the public records officer may charge the requestor for the cost of such access, including programming costs, other staff time, and other direct costs.

(f) The (agency) will publish the cost for its programming time, other staff time, and other direct costs by separate rule or schedule.

(g) The (agency) may choose to provide the electronic public records in a requested electronic format (such as a compact disk). The (agency) may choose another format if that format is consistent with its business purposes and the factors in (c) of this subsection.

Comments to WAC 44-14-050

NEW SECTION

WAC 44-14-05001 Access to electronic records. Many agency records are in an electronic format.[1] An agency may provide public records in an electronic format commercially available to the requestor but is not required to do so.

If the electronic records are readable only with special software available to the agency, but are unreadable to the requestor without the software, the agency has two options. First, it may print out the records and then provide paper copies to the requestor. As a practical matter, this may be the best practice for most requests, particularly ones that are for a small number of records. Second, for large requests where printing records may be prohibitive, the agency may allow the requestor to view the records at the agency location and then provide the requestor with the option of purchasing printed documents. However, there must be access to electronic public records. Offering records in an unreadable format, when they could readily be provided in a readable printed format, is not providing "access" to the records.

Note: [1]This section discusses electronic public records, not data bases requiring customized access.

NEW SECTION

WAC 44-14-05002 "Customized access" to electronic records. (1) **No duty to create electronic records.** The agency is not required to create a new record in response to a request.[1] However, sometimes it is easier for an agency to create a record than to dispute the merits of a given request. An agency may, at its discretion, provide customized access to electronic records. The requestor must pay the agency's actual costs for providing customized access.

(2) **Complications of providing customized access to electronic records and data bases.** Many agencies maintain electronic records and data bases. A requestor might seek a few of the fields in a data base or to query a term. This will be referred to as "customized access" in the model rules.

The definition of "public record" includes "existing data compilations from which information may be obtained or translated." RCW 42.17.020(48). This would include many electronic records and data bases. However, an agency is not required to "create" a new public record. Balancing these two principles, and taking into account the often limited resources

of an agency, it would be reasonable for an agency to consider customized access, but only if doing so would be relatively easy to accomplish. Another factor would be if the agency routinely keeps or uses the electronic information in the way requested. If so, the agency should provide it. If not, satisfying the request would probably require the creation of a new record.

The burden on the agency is the primary factor that should be used to determine whether an agency should provide customized access.[2] For example, if customized access required a few steps (such as a few mouse clicks), an agency should consider doing so in order to provide the "fullest assistance" to the requestor. If customized access required significant agency staff time or special computer programming, the agency is not obligated to provide customized access. An agency is not required to provide an electronic copy of the data base when one or more fields are exempt from disclosure but cannot be electronically redacted or where electronic redaction would involve undue expense. An agency is not required to provide customized access if doing so would violate an agency's software license.

If the agency decides to provide customized access, the requestor must pay the agency's costs, which might include staff time or special programming. RCW 43.105.280 (fees for staff time to respond to requests, and other direct costs may be included in costs of providing customized access).

Notes: [1]*Smith v. Okanogan County*, 100 Wn. App. 7, 14, 994 P.2d 857 (2000).

[2]*See* RCW 43.105.270 (state agencies should provide records electronically "within existing resources").

EXEMPTIONS

NEW SECTION

WAC 44-14-060 Exemptions. (1) The Public Records Act sets forth a number of documents that are exempt from public inspection and copying in RCW 42.17.310(1) and 42.17.311 through 42.17.31915. In addition, pursuant to RCW 42.17.260(1) if any "other statute" exempts or prohibits the disclosure of specific information or records, that law controls. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents for inspection and copying:

(List other laws)

(2) The (agency) is prohibited by statute from disclosing lists of individuals for commercial purposes.

Comments to WAC 44-14-060

NEW SECTION

WAC 44-14-06001 Agency must publish list of applicable exemptions. An agency must publish and maintain a list of the "other statute" exemptions from disclosure (that is, those exemptions found outside the Public Records Act) that it believes potentially exempt its records from disclosure. RCW 42.17.260(2). The list is "for informational purposes only" and an agency's failure to list an exemption "shall not affect the efficacy of any exemption." RCW 42.17.260(2). A list of possible "other statute" exemptions is posted on the web site of the Municipal Research Service Center at www.mrsc.org/****Publications/prdpub04.pdf (scroll to Appendix C).

NEW SECTION

WAC 44-14-06002 Summary of exemptions. (1) **General.** The act and other statutes contain hundreds of exemptions from disclosure and dozens of court cases interpret them. A full treatment of all exemptions is beyond the scope of the model rules. Instead, these comments to the model rules provide general guidance on exemptions and summarize a few of the most frequently invoked exemptions. However, the scope of exemptions is determined exclusively by statute and case law; the comments to these model rules merely provide guidance on a few of the most common issues.

An exemption from disclosure will be narrowly construed in favor of disclosure. RCW 42.17.251. An exemption from disclosure must specifically exempt a record or portion of a record from disclosure. RCW 42.17.260(1). An exemption will not be inferred.[1]

The act itself contains numerous exemptions. RCW 42.17.310 (1)(a) through (ggg) and 42.17.311 through 42.17.-31915. However, many more exemptions are contained outside the act. RCW 42.17.260(1) provides that a record may be exempt under an "other statute" which exempts or prohibits disclosure of specific information or records. Numerous "other statute" exemptions exist outside the act. For example, trade secrets are exempt under the Uniform Trade Secrets Act (RCW 19.108).[2]

An agency cannot define the scope of a statutory exemption through rule making or policy.[3] An agency agreement or promise not to disclose a record cannot circumvent the act. RCW 42.17.260(1).[4] Any agency contract regarding the disclosure of records should recite that the act controls.

An agency must describe why each withheld record or redacted portion of a record is exempt from disclosure. RCW 42.17.310(4). One way to describe why a record was withheld or redacted is by using a withholding index. See WAC 44-14-04020.

After invoking an exemption in its response, an agency may revise its original claim of exemption in a response to a motion to show cause.[5] See WAC 44-14-08007.

Some statutes provide that a record is "exempt" from disclosure and others provide that a record is "confidential" or otherwise prohibit disclosure.

Exemptions are "permissive rather than mandatory." Op. Att'y Gen. 1 (1980), at 5. In such cases, an agency has the discretion to provide an exempt record. However, in contrast to a waivable "exemption," an agency cannot provide a record when a statute makes it "confidential" or otherwise prohibits disclosure. For example, the Health Care Information Act generally prohibits the disclosure of medical information without the patient's consent. RCW 70.02.020(1). An agency and its employees are immune from liability to a third party for releasing a record when they are attempting to follow the act in good faith. RCW 42.17.258. However, if a statute classifies information as "confidential" or otherwise

prohibits disclosure, an agency has no discretion to release a record or the confidential portion of it.[6] Some statutes provide civil and criminal penalties for the release of particular "confidential" records. See RCW 82.32.330(5) (release of certain state tax information a misdemeanor).

(2) **"Privacy" exemption.** There is no general "privacy" exemption. Op. Att'y Gen. 12 (1988).[7] However, a few specific exemptions incorporate privacy as one of the elements of the exemption. For example, personal information in agency employee files is exempt to the extent that disclosure would violate the employee's right to "privacy." RCW 42.17.310 (1)(b). "Privacy" is then one of the elements, in addition to the others in RCW 42.17.310 (1)(b), that an agency choosing not to disclose or a third party resisting disclosure must prove.

"Privacy" is defined in RCW 42.17.255 as the disclosure of information that "(1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." This is a two-part test requiring the party seeking to prevent disclosure to prove both elements.[8]

Because "privacy" is not a stand-alone exemption, an agency cannot claim RCW 42.17.255 as an exemption.[9]

(3) **Attorney-client privilege.** The attorney-client privilege statute, RCW 5.60.060 (2)(a), is an "other statute" exemption from disclosure.[10] In addition, RCW 42.17.310 (1)(j) exempts attorney work-product involving a "controversy," which means contemplated, existing, or reasonably anticipated litigation involving the agency.[11] Discussion of the scope of the attorney-client privilege and work-product doctrine is too broad for these comments. However, in general, the attorney-client privilege covers records reflecting communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties and an attorney serving in the capacity of legal advisor for the purpose of rendering or obtaining legal advice, and records prepared by the attorney in furtherance of the rendition of legal advice. It does not exempt records merely because they reflect communications in meetings where legal counsel was present or because a record or copy of a record was provided to legal counsel if the other elements of the privilege are not met.[12] A guidance document prepared by the attorney general's office on the attorney-client privilege and work-product doctrine is available at www.atg.wa.gov/records/modelrules.

(4) **Deliberative process exemption.** RCW 42.17.310 (1)(i) exempts "Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended" except if the record is cited by the agency.

In order to rely on this exemption, an agency must show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which a decision is based.[13] Courts have held that this exemption is "severely limited" by its purpose, which is to protect the free flow of opinions by policy makers.[14] It applies only to recommendations, opinions, and proposed policies; it does not apply to factual data contained in the record.[15] The exemption does not apply to the entirety of a draft but rather only to the portions of it containing recommendations, opinions, and proposed policies. The exemption does not apply merely because a record is called a "draft" or stamped "draft." Recommendations that are actually implemented lose their protection from disclosure after they have been adopted by the agency.[16]

(5) **"Overbroad" exemption.** There is no "overbroad" exemption. RCW 42.17.270 (2005). See WAC 44-14-04005.

(6) **Commercial use exemption.** The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." RCW 42.17.260(9). An agency may require a requestor to sign a declaration that he or she will not put a list of individuals in the record to use for a commercial purpose.[17] While technically not an exemption, RCW 42.17.260(9) requires that an agency refuse to provide a list of individuals for a commercial use. This authority is limited to a list of individuals, not a list of companies.[18] A requestor who signs a declaration promising not to use a list of individuals for a commercial purpose, but who then violates this declaration, could be charged with the crime of false swearing. RCW 9A.72.040.[19]

(7) **Trade secrets.** Many agencies hold sensitive proprietary information of businesses they regulate. For example, an agency might require an applicant for a regulatory approval to submit designs for a product it produces. A record is exempt from disclosure if it constitutes a "trade secret" under the Uniform Trade Secrets Act, chapter 19.108 RCW.[20] However, the definition of a "trade secret" is very complex and often the facts showing why the record is or is not a trade secret are only known by the potential holder of the trade secret who submitted the record in question.

When an agency receives a request for a record that might be a trade secret, often it does not have enough information on which it can make a determination as to whether the record qualifies as a "trade secret." An agency is allowed additional time under the act to determine if an exemption might apply. RCW 42.17.320.

When an agency cannot determine whether a requested record contains a "trade secret," usually it should communicate with the requestor that the agency is providing the potential holder of the trade secret an opportunity to object to the disclosure. The agency should then contact the potential holder of the trade secret in question and state that the record will be released in a certain amount of time unless the holder files a court action seeking an injunction prohibiting the agency from disclosing the record under RCW 42.17.330. Alternatively, the agency can ask the potential holder of the trade secret for an explanation of whether the record might be a trade secret, and state that if the record is not a trade secret or otherwise exempt that the agency intends to release it. If it asks for such an explanation, the agency should inform the potential holder of the trade secret that the response will be shared with the requestor. The explanation can assist the agency in determining whether it will claim the trade secret exemption. If the agency concludes that the record is arguably not exempt, it should provide a notice of intent to dis-

close unless the potential holder of the trade secret obtains an injunction preventing disclosure under RCW 42.17.330.

As a general matter, many agencies do not assert the trade secret exemption on behalf of the individual or business but rather allow the potential holder of the trade secret to seek an injunction.

Notes: [1]*Progressive Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 262, 884 P.2d 592 (1994) ("*PAWS II*").

[2]*Id.*

[3]*Servais v. Port of Bellingham*, 127 Wn.2d 820, 834, 904 P.2d 1124 (1995).

[4]*Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 40, 769 P.2d 283 (1989); *Van Buren v. Miller*, 22 Wn. App. 836, 845, 592 P.2d 671, *review denied*, 92 Wn.2d 1021 (1979).

[5]*PAWS II*, 125 Wn.2d at 253.

[6]Op. Att'y Gen. 7 (1986).

[7]*See* RCW 42.17.255 ("privacy" linked to rights of privacy" specified in (the act) as express exemptions").

[8]*King County v. Sheehan*, 114 Wn. App. 325, 344, 57 P.3d 307 (2002).

[9]Op. Att'y Gen. 12 (1988), at 3 ("The legislature clearly repudiated the notion that agencies could withhold records based solely on general concerns about privacy.").

[10]*Hangartner v. City of Seattle*, 151 Wn.2d 439, 453, 90 P.3d 26 (2004).

[11]*Dawson v. Daly*, 120 Wn.2d 782, 791, 845 P.2d 995 (1993).

[12]This summary comes from the attorney general's proposed definition of the privilege in the first version of HB 1758 (2005).

[13]*PAWS*, 125 Wn.2d at 256.

[14]*Hearst (2005) Corp. v. Hoppe*, 90 Wn.2d 123, 133, 580 P.2d 246 (1978); *PAWS II*, 125 Wn.2d at 256.

[15]*Id.*

[16]*Dawson*, 120 Wn.2d at 793.

[17]Op. Att'y Gen. 12 (1988). However, a list of individuals applying for professional licensing or examination may be provided to professional associations recognized by the licensing or examination board. RCW 42.17.260(9).

[18]Op. Att'y Gen. 2 (1998).

[19]RCW 9A.72.040 provides: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a gross misdemeanor." RCW 42.17.270 authorizes an agency to determine if a requestor will use a list of individuals for commercial purpose. *See* Op. Att'y Gen. 12 (1988), at 10-11 (agency could require requestor to sign affidavit of noncommercial use).

[20]*PAWS II*, 125 Wn.2d at 262.

COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

NEW SECTION

WAC 44-14-070 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for (amount) cents per page and color copies for (amount) cents per page.

If agency decides to charge more than fifteen cents per page, use the following language: The agency charges (amount) per page for a standard black and white photocopy of a record selected by a requestor. A statement of the factors and the manner used to determine this charge is available from the public records officer.

Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of an installment before providing an installment. The (agency) may not charge sales tax of the costs of copies.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be (amount) for information on a floppy disk and (amount) for information on a CD-ROM. If the request requires customized access to electronic records, the public records officer will charge actual costs of such access, including staff time and other direct costs.

(3) **Costs of mailing.** The public records officer may also charge actual costs of mailing.

(4) **Payment.** Payment may be made by cash or check to "Public Records Officer (of agency)."

Comments to WAC 44-14-070

NEW SECTION

WAC 44-14-07001 General rules for charging for copies. (1) **No fees for costs of inspection.** An agency cannot charge a fee for locating public records or for preparing the records for inspection or copying. RCW 42.17.300.[1] An agency cannot charge a "redaction fee" for the staff time necessary to prepare the records for inspection, for the copying required to redact records before they are inspected, or an archive fee for getting the records from off-site. Op. Att'y Gen. 6 (1991). These are the costs of making the records available for inspection or copying.

(2) **Standard photocopy charges.** Standard photocopies are black and white 8x11 paper copies. An agency can choose to calculate its copying charges for standard photocopies or to opt for a default copying charge of no more than fifteen cents per page.

If it attempts to charge more than the fifteen cents per page maximum for photocopies, an agency must establish a statement of the "actual cost" of the copies it provides, which must include a "statement of the factors and the manner used to the determine the actual per page cost." RCW 42.17.260 (7). An agency may include the costs "directly incident" to providing the copies such as paper, copying equipment, and staff time to make the copies. RCW 42.17.260(7)(a).[2] An agency failing to properly establish a copying charge in excess of the default fifteen cents per page maximum is limited to the default amount. RCW 42.17.260(7) and 42.17.-300.

If it charges more than the default rate of fifteen cents per page, an agency must provide its calculations and the reasoning for its charges. RCW 42.17.260(7) and 42.17.300.[3] A price list with no analysis is insufficient. An agency's calculations and reasoning need not be elaborate but should be detailed enough to allow a requestor or court to determine if the agency has properly calculated its copying charges. An

agency should generally compare its copying charges to those of commercial copying centers.

If an agency opts for the default copying charge of fifteen cents per page, it need not calculate its actual costs. RCW 42.17.260(8).

(3) **Charges for copies other than standard photocopies.** Nonstandard copies include color copies, engineering drawings, computer disks, and photographs. An agency can charge its actual costs for nonstandard photocopies. RCW 42.17.300. For example, when an agency provides records in an electronic format by putting the records on a disk, it may charge its actual costs for the disk. The agency's documentation of the costs of nonstandard copies can be less detailed than its calculations for standard photocopies because it can only charge its actual costs for nonstandard copies and actual costs are easier to document. The agency can provide a requestor with documentation for its actual costs by providing a catalog or price list from a vendor.

(4) **Copying charges apply to copies selected by requestor.** Often a requestor will seek to inspect a large number of records but only select a smaller group of them for copying. Copy charges can only be charged for the records selected by the requestor. RCW 42.17.300 (charges allowed for "providing" copies to requestor).

The requestor should specify in the request form or otherwise whether he or she seeks inspection or copying. If he or she seeks inspection, the agency should inform the requestor that inspection is free. If he or she seeks copies, then the agency should inform the requestor of the copying charges for the request. An agency should not assemble a large number of records, fail to inform the requestor that inspection is free, and then attempt to charge for copying all the records.

Sometimes a requestor will choose to pay for the copying of a large batch of records without inspecting them. This is allowed, provided that the requestor is informed that inspection is free. Informing the requestor on a request form that inspection is free is sufficient.

(5) **Use of outside vendor.** An agency is not required to copy records at its own facilities. An agency can send the project to a commercial copying center and bill the requestor for the amount charged by the vendor. An agency is encouraged to do so when an outside vendor can make copies more quickly and less expensively than an agency. An agency can arrange with the requestor for him or her to pay the vendor directly. An agency cannot charge the default fifteen cents per page rate when its "actual cost" at a copying vendor is less. The default rate is only for agency-produced copies. RCW 42.17.300.

(6) **Sales tax.** An agency cannot charge sales tax for providing copies of public records. RCW 82.12.02525.

(7) **Costs of mailing.** If a requestor asks an agency to mail copies, the agency may charge for the actual cost of postage and the shipping container (such as an envelope). RCW 42.17.270 (6)(a).

Notes: [1]*See also* Op. Att'y Gen. 6 (1991).

[2]The costs of staff time is allowed only for making copies. An agency cannot charge for staff time for locating records or other noncopying functions. *See* RCW 42.17.300 ("No fee shall be charged for locating public documents and making them available for copying.").

[3]*See also* Op. Att'y Gen. 6 (1991) (agency must "justify" its copy charges).

NEW SECTION

WAC 44-14-07003 Charges for electronic records. An agency may provide a paper copy of an electronic record. Providing a paper copy is "access" to the record. The act does not allow a requestor to specify the format of a copy by demanding, for example, an electronic copy. When an agency provides a paper copy of an electronic record, it can charge its usual copy charge for a printed record.

Providing records in an electronic format is allowed if the requestor and agency agree. This is often more efficient for both parties. If the requestor agrees, an agency could charge a per-page scanning fee to provide scanned records in an electronic format. The agency must establish the scanning fee in a cost schedule conforming to RCW 42.17.300.

NEW SECTION

WAC 44-14-07004 Other statutes govern copying of particular records. The act generally governs copying charges for public records, but several specific statutes govern charges for particular kinds of records. RCW 42.17.305. The following nonexhaustive list provides some examples: RCW 46.52.085 (charges for traffic accident reports), RCW 10.97.100 (copies of criminal histories), RCW 3.62.060 and 3.62.065 (charges for certain records of municipal courts), and RCW 70.58.107 (charges for birth certificates).

NEW SECTION

WAC 44-14-07005 Waiver of copying charges. An agency has the discretion to waive copying charges. For administrative convenience, many agencies waive copying charges for small requests. For example, the attorney general's office does not charge copying fees if the request is for twenty-five or fewer standard photocopies.

NEW SECTION

WAC 44-14-07006 Requiring partial payment. (1) **Copying deposit.** An agency may charge a deposit of up to ten percent of the estimated copying costs of an entire request before beginning to copy the records. RCW 42.17.300 (2005).[1] The estimate must be reasonable. An agency can require the payment of the deposit before copying an installment of the records or the entire request. The deposit applies to the records selected for copying by the requestor, not all the records made available for inspection. An agency is not required to charge a deposit. An agency might find a deposit burdensome for small requests where the deposit might be only a few dollars. Any unused deposit must be refunded to the requestor.

When copying is completed, the agency can require the payment of the remainder of the copying charges before providing the records. For example, a requestor makes a request for records that comprise one box of paper documents. The requestor selects the entire box for copying. The agency estimates that the box contains three thousand pages of records.

The agency charges ten cents per page so the cost would be three hundred dollars. The agency obtains a ten percent deposit of thirty dollars and then begins to copy the records. The total number of pages turns out to be two thousand nine hundred so the total cost is two hundred ninety dollars. The thirty dollar deposit is credited to the two hundred ninety dollars. The agency requires payment of the remaining two hundred sixty dollars before providing the records to the requestor.

(2) **Copying charges for each installment.** If an agency provides records in installments, the agency may charge and collect all applicable copying fees (not just the ten percent deposit) for each installment. RCW 42.17.300 (2005). The agency may agree to provide an installment without first receiving payment for that installment.

Note: [1]*See* RCW 42.17.300 (2005) (ten percent deposit for "a request").

REVIEW OF DENIALS OF PUBLIC RECORDS

NEW SECTION

WAC 44-14-080 Review of denials of public records. (1) **Petition for review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include or refer to the written statement by the public records officer denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to (public records officer's supervisor or other agency official). That person shall immediately consider the petition and either affirm or reverse such denial within two business days following receipt of the petition.

(3) **(Applicable to state agencies only.) Review by the attorney general's office.** Pursuant to RCW 42.17.325, if the (state agency) denies a requestor access to public records because it claims the record is exempt from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Court review of denials of public records request is available pursuant to RCW 42.17.340 at the conclusion of the agency internal appeal process, or two business days after the initial denial, whichever occurs first.

Comments to WAC 44-14-080

NEW SECTION

WAC 44-14-08001 Agency internal procedure for review of denials of requests. The act requires an agency to "establish mechanisms for the most prompt possible review of decisions denying" records requests. RCW 42.17.320. An agency internal review of a denial need not be elaborate. It could be reviewed by the public records officer's supervisor.

NEW SECTION

WAC 44-14-08002 Attorney general's office review of denials by state agencies. The attorney general's office is authorized to review a state agency's claim of exemption and provide a written opinion. RCW 42.17.325. This only applies to state agencies and a claim of exemption. See WAC 44-06-160. A requestor may initiate such a review by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100 or www.atg.wa.gov/records.

NEW SECTION

WAC 44-14-08003 Alternative dispute resolution. Requestors and agencies are encouraged to resolve public records disputes through alternative dispute resolution mechanisms such as mediation and arbitration. No formal mechanisms for formal alternative dispute resolution currently exist in the act but parties are encouraged to resolve their disputes without litigation.

NEW SECTION

WAC 44-14-08004 Judicial review. (1) **Seeking judicial review.** The act provides that an agency's decision to deny a request is final for purposes of judicial review two business days after the initial denial of the request. RCW 42.17.320.[1] Therefore, the statute allows a requestor to seek judicial review two business days after the initial denial whether or not he or she has exhausted the internal agency review process.[2] An agency should not have an internal review process that implies that a requestor cannot seek judicial review until internal reviews are complete because RCW 42.17.320 allows judicial review two business days after the initial denial.

The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated the act. RCW 42.17.340 (1) and (2). The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records.[3] To speed up the court process, a public records case may be decided merely on the "motion" of a requestor "solely on affidavits." RCW 42.17.340 (1) and (3).

(2) **Statute of limitations.** The statute of limitations for an action under the act is one year after the agency's claim of exemption or the last production of a record on a partial or installment basis. RCW 42.17.340(6) (2005).

(3) **Procedure.** To initiate court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. RCW 42.17.340 (1) and (2).[4] The case must be filed in the superior court in the county in which the record is maintained. RCW 42.17.340 (1) and (2). In a case against a county, the case may be filed in the superior court of that county, or in the superior court of either of the two nearest adjoining counties. RCW 42.17.340(5) (2005). The show-cause procedure is designed so that a nonattorney requestor can obtain judicial review him or herself without hiring an attorney. A requestor can file a motion for summary judgment to adjudicate the

case.[5] However, most cases are decided on a motion to show cause.[6]

(4) **Burden of proof.** The burden is on an agency to demonstrate that it complied with the act. RCW 42.17.340 (1) and (2).

(5) **Types of cases subject to judicial review.** The act provides three mechanisms for court review of a public records dispute.

(a) **Denial of record.** The first kind of judicial review is when a requestor's request has been denied by an agency. RCW 42.17.340(1). This is the most common kind of case.

(b) **"Reasonable estimate."** The second form of judicial review is when a requestor challenges an agency's "reasonable estimate" of the time to provide a full response. RCW 42.17.340(2). See WAC 44-14-04010.

(c) **Section 330 injunctive action to prevent disclosure.** The third mechanism of judicial review is an injunctive action to restrain the disclosure of public records. RCW 42.17.330. A Section 330 action can be initiated by the agency, a person named in the disputed record, or a person to whom the record "specifically pertains." The party attempting to prevent disclosure has the burden of proving the record is exempt from disclosure.[7] The party resisting disclosure must prove both the necessary elements of an injunction and that a specific exemption prevents disclosure.[8]

(6) **"In camera" review by court.** The act authorizes a court to review withheld records or portions of records "in camera." RCW 42.17.340(3). "In camera" means a confidential review by the judge alone in his or her chambers. Courts are encouraged to conduct an in camera review because it is often the only way to determine if an exemption has been properly claimed.[9]

An agency should prepare an in camera index of each withheld record or portion of a record to assist the judge's in camera review. This is a second index, in addition to a withholding index provided to the requestor. The in camera index should number each withheld record or redacted portion of the record, provide the record or unredacted portion to the judge with a reference to the index number, and provide a brief explanation of each claimed exemption corresponding to the numbering system. The agency's brief explanation should not be as detailed as a legal brief because the opposing party will not have an opportunity to review it and respond. The agency's legal briefing should be done in the normal course of pleadings, with the opposing party having an opportunity to respond.

The in camera index and disputed records or unredacted portions of records should be filed under seal. The judge should explain his or her ruling on each withheld record or redacted portion by referring to the numbering system in the in camera index. If the trial court's decision is appealed, the in camera index and its attachments should be made part of the record on appeal and filed under seal in the appellate court.

(7) **Attorneys' fees, costs, and penalties to prevailing requestor.** The act requires an agency to pay a prevailing requestor's reasonable attorneys' fees, costs, and a daily penalty. RCW 42.17.340(4). Only a requestor can be awarded attorneys' fees, costs, or a daily penalty under the act; an agency or a third party resisting disclosure cannot.[10] A requestor is the "prevailing" party when he or she obtains a judgment in his or her favor, the suit was reasonably necessary to obtain the record, or a wrongfully withheld record was provided for another reason.[11] In a Section 330 injunctive action, the prevailing requestor cannot be awarded attorneys' fees, costs, or a daily penalty against an agency if the agency took the position that the record was subject to disclosure.[12]

The purpose of the act's attorneys' fees, costs, and daily penalty provisions is to reimburse the requestor for vindicating the public's right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records.[13] However, a court is authorized to only award "reasonable" attorneys' fees. RCW 42.17.340(4). A court has discretion to award attorneys' fees based on the "lodestar" analysis, which looks at a reasonable hourly rate and assesses which work was necessary to obtain the favorable result.[14]

The award of "costs" under the act is for all of a requestor's nonattorney-fee costs and is broader than the court costs awarded to prevailing parties.[15]

A daily penalty of between five dollars to one hundred dollars must be awarded to a prevailing requestor, regardless of an agency's "good faith."[16] An agency's "bad faith" can warrant a penalty on the higher end of this scale.[17] The penalty is per day, not per-record per-day.[18]

Notes:

[1] *PAWS II*, 125 Wn.2d at 253 (RCW 42.17.320 "provides that, regardless of internal review, initial decisions become final for purposes of judicial review after two business days.").

[2] *See, e.g.*, WAC 44-06-120 (attorney general's office internal review procedure specifying that review is final when the agency renders a decision on the appeal, or the close of the second business day after it receives the appeal, "whichever occurs first").

[3] *Spokane Research & Def. Fund v. City of Spokane*, 121 Wn. App. 584, 591, 89 P.3d 319 (2004), *reversed on other grounds*, 155 Wn.2d 89, 117 P.3d 1117 (2005) ("The purpose of the PDA is to ensure speedy disclosure of public records. The statute sets forth a simple procedure to achieve this.").

[4] *See* generally *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005).

[5] *Id.*, 117 P.3d at 1126.

[6] *Wood v. Thurston County*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003).

[7] *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 735, 744, 958 P.2d 260 (1998).

[8] *PAWS II*, 125 Wn.2d at 257-58.

[9] *Spokane Research & Def. Fund v. City of Spokane*, 96 Wn. App. 568, 577 & 588, 983 P.2d 676 (1999), *review denied*, 140 Wn.2d 1001, 999 P.2d 1259 (2000).

[10] RCW 42.17.340(4) (providing award only for "person" prevailing against "agency"); *Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691-92, 13 P.3d 1104 (2000) (third party resisting disclosure not entitled to award).

[11] *Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, 59 P.3d 109 (2002); *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117, 1124-25 (2005).

[12] *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 735, 757, 958 P.2d 260 (1998).

[13] *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 115, 975 P.2d 536 (1999) ("permitting a liberal recovery of costs is consistent with the policy behind

the act by making it financially feasible for private citizens to enforce the public's right to access to public records.").

[14]*Id*. at 118.

[15]*Id*. at 115.

[16]*American Civil Liberties Union v. Blaine School Dist. No. 503*, 86 Wn. App. 688, 698-99, 937 P.2d 1176 (1997) ("*ACLU I*").

[17]*Id*.

[18]*Yousoufian v. Office of Ron Sims*, 152 Wash.2d 421, 436, 98 P.3d 463 (2004).