

**WSR 06-12-012**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed May 26, 2006, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-076.

Title of Rule and Other Identifying Information: Amending WAC 308-87-010 Definitions.

Hearing Location(s): Department of Licensing, Conference Room 102, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on July 17, 2006, at 10:00 a.m.

Date of Intended Adoption: October 1, 2006.

Submit Written Comments to: Harumi Tolbert, P.O. Box 48001, Olympia, WA 98504-8001, e-mail htolbert@dol.wa.gov, fax (360) 570-7875, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Harumi Tolbert by July 10, 2006, TTY (360) 664-8885 or (360) 664-1389.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The law was changed so that all definitions of limousines will be in rule. This change will allow vehicles that can be used as limousines but were not in the old law to be licensed as well as add new categories of limousines to be licensed.

This rule will define limousine categories.

Reasons Supporting Proposal: Until the new law was passed, all definition language was encompassed within RCW 46.04.274. The bill changed the law so that definitions would be developed using the rules process.

Statutory Authority for Adoption: RCW 46.04.274 Definitions, 46.01.110 Rule-making Authority, chapter 46.72A RCW, Limousines.

Statute Being Implemented: RCW 46.04.274.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Harumi Tolbert, Department of Licensing, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-1389; and Enforcement: Christine Fox, Washington State Patrol, Olympia, Washington, (360) 753-3697.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no additional costs to the public as a result of this rule amendment.

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

May 22, 2006

Nancy Skewis, Administrator  
 Business Resource Section

AMENDATORY SECTION (Amending WSR 96-16-032, filed 8/1/96, effective 9/1/96)

**WAC 308-87-010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Limousine" (~~as defined in chapter 87, Laws of 1996-~~) means a category of for hire, chauffeur-driven, unmetered, unmarked luxury motor vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity of not more than twelve passengers behind the driver, and a maximum wheelbase of 277 inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. The automobile is equipped with amenities in the rear seating area not normally found in passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, power-operated dividers, or additional interior lighting. Rear tailgates or hatches are not to be used as a primary door for loading or unloading passengers. The term "stretch limousine" excludes trucks, auto transportation companies, excursion buses, charter buses, minibuses, vehicles regulated under chapter 81.66 RCW, taxicabs, executive sedans, executive sport utility vehicles, stretch sport utility vehicles, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(b) "Executive sedan" means a four-door sedan automobile having a seating capacity of not more than three passengers behind the driver and a minimum wheelbase of 114.5 inches. An executive sedan is equipped with standard factory amenities, and the wheelbase may not be altered. The term "executive sedan" excludes trucks, auto transportation companies, excursion buses, minibuses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sport utility vehicles, stretch sport utility vehicles, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(c) "Executive van" means a van, minivan, or minibus having a seating capacity of not less than seven passengers and not more than fourteen passengers behind the driver. The term "executive van" excludes trucks, auto transportation companies, excursion buses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sedans, executive sport utility vehicles, stretch sport utility vehicles, funeral home vehicles, station wagons, and courtesy vans.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

(e) "Executive sport utility vehicle" means an automobile with a seating capacity of not less than three passengers and not more than six passengers behind the driver, and a minimum wheelbase of 116 inches that has not been altered. Rear tailgates or hatches are not to be used as a primary door for loading or unloading passengers. The term "executive sport utility vehicle" excludes trucks, auto transportation companies, excursion buses, minibuses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sedans, stretch sport utility vehicles, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(f) "Stretch sport utility vehicle" means an automobile with a seating capacity of not more than fourteen passengers behind the driver or a total of fifteen occupants including the driver and a maximum wheelbase of 280" that has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. The automobile is equipped with amenities in the rear seating area not normally found in

passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, power-operated dividers, or additional interior lighting. Rear tailgates or hatches are not to be used as a primary door for loading or unloading passengers. The term "stretch sport utility vehicle" excludes trucks, auto transportation companies, excursion buses, minibuses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sedans, executive sport utility vehicles, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(2) "Business owner" means operator or carrier as defined in chapter ~~((87, Laws of 1996))~~ 46.72A RCW.

(3) "Person or persons" means an individual, a corporation, association, joint stock association, partnership, limited liability partnership or limited liability ~~((companies))~~ company, or their lessees, trustees, or receivers.

(4) "Public highway" includes every public street, road, or highway in this state.

(5) "Chauffeur" means any person with a valid Washington state driver's license and authorized to drive a limousine as defined in chapter ~~((87, Laws of 1996))~~ 46.72A RCW.

(6) "Master license" as defined in chapter 19.02 RCW.

(7) "Vehicle certificate" is a limousine vehicle certificate issued by the department which must be carried in the limousine vehicle at all times. The vehicle certificate is not the vehicle registration.

(8) "Passenger capacity" may be determined using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle pursuant to 49 CFR, parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department of licensing may determine the passenger capacity upon visual inspection of the vehicle.

### WSR 06-12-015

#### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed May 26, 2006, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-18-034.

Title of Rule and Other Identifying Information: WAC 458-20-243 Litter tax.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on July 12, 2006, at 9:30 a.m.

Date of Intended Adoption: July 19, 2006.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, fax (360) 586-5543, by July 12, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-798 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes to WAC 458-20-243 (Rule 243) to

include legislative changes that require taxpayers to report litter tax on each return filed, instead of annually. It also recognizes legislation that provided exemptions for food and beverages sold for consumption indoors on the seller's premises, and certain retail sales made by caterers. Definitions for some items, such as soft drinks, have also been updated to reflect changes in the law adopting streamlined sales and use tax agreement definitions.

In addition, the department is proposing a change to the tax reporting instructions for publishers of newspapers and magazines. The current rule states that the measure for litter tax is the same as specified for B&O tax purposes, which is the gross income from the publishing business including advertising income. The proposed rule changes the measure for litter tax to the gross proceeds from the sale of newspapers and magazines, which does not include advertising income.

Reasons Supporting Proposal: The revised rule will provide current tax information to taxpayers and department staff.

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

Statute Being Implemented: Chapter 82.19 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 25, 2006

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

**WAC 458-20-243 Litter tax.** ~~((RCW 70.93.120 levies an annual litter assessment upon))~~ **(1) Introduction.** Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products. ((The rate of this special tax is .00015 (.015%) and it applies to sales within this state made on and after May 21, 1971.)) Litter tax is imposed independently of the business and occupation (B&O) tax and retail sales and use taxes. RCW 82.19.010. This section provides detailed information about litter tax, including the measure of the tax, the products to which the tax applies, and specific exemptions from the tax.

~~((The tax is to be computed on and paid with the last return for the calendar year. A designated space on this return is to be used for reporting the litter tax.~~

~~The measure of the tax is the gross proceeds of the sales of the business and will apply to places of business on sales of products falling into the thirteen categories listed in RCW 70.93.130 which are defined as follows:~~

~~((1)) (2) **Tax measure.** For manufacturers, the measure of the tax is the value of products listed in subsection (4) of this section, including by-products manufactured in this state. For wholesalers and retailers, the measure of the tax is the gross proceeds of sales within this state of the products listed in subsection (4) of this section. In the case of publishers of newspapers and magazines, the measure of the tax is the gross proceeds of sales, and does not include advertising income.~~

~~Litter tax is imposed on subsequent sales of the same goods from the manufacturer to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consumer, if the goods are listed in subsection (4) of this section, and the sales are not specifically exempt by law.~~

~~(a) **Value of products and gross proceeds of sales.** For purposes of the litter tax, "value of products" and "gross proceeds of sales" have the same meanings as defined in RCW 82.04.450 and 82.04.070, respectively. See also WAC 458-20-112 for more information regarding "value of products."~~

~~(b) **Grocery stores and drugstores.** Where it is impractical to separate products that are and are not subject to litter tax, an alternative method is allowed. Persons operating drugstores may report and pay litter tax measured by fifty percent of total sales in lieu of separately accounting for sales of nondrug drugstore sundry products. (See subsection (4)(n) of this section for information about what constitutes nondrug drugstore sundry products.) Persons operating grocery stores may report and pay the litter tax measured by ninety-five percent of total sales in lieu of separately accounting for grocery and nongrocery products sold. (See subsection (4)(b) of this section for information about what constitutes grocery products.)~~

~~(3) **When do I report and pay litter tax?** The frequency of reporting and paying litter tax coincides with the reporting periods of taxpayers for their B&O tax. For example, a wholesaler who reports B&O tax monthly would also report any litter tax liability on the monthly return. For more information on tax reporting frequency, see WAC 458-20-22801 Tax reporting frequency—Forms.~~

~~(4) **What products are subject to litter tax?** Litter tax applies to the manufacture or sale of products in the product categories in this subsection, unless a specific exemption applies. Litter tax applies whether these products are sold packaged, unpackaged, or in recyclable containers. See subsection (5) of this section for the litter tax exemptions available for the manufacture or sale of products in these categories.~~

~~(a) **Food for human or pet consumption ((means)),** Food for human or pet consumption is any substance, except drugs, where the chief general use ((of which)) is for human or pet nourishment, ((including)) regardless of whether the substance is sold in a consumable form. Food for human or pet consumption includes candy, chewing gum, ((and)) con-~~

~~diments, packaged or unpackaged meat, bulk foods, shellfish, and ingredients used in processing food for human or pet consumption such as industrial chocolate, grain, barley, or hops. ((H)) This category includes sales of meals, snacks, lunches, or other food ((by)) and beverages at restaurants, drive-ins, snack bars, ((concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like)) taverns, or by concessionaires.~~

~~((2)) (b) **Groceries ((means)),** Groceries are all products((-except drugs;)) sold by persons in a place of business selling food for off-premises consumption, but excluding drugs, building materials, clothing, furniture, and appliances.~~

~~((3)) (c) **Cigarettes and tobacco products,** Cigarettes and tobacco products include all of the products subject to the excise taxes ((of)) imposed by chapters 82.24 and 82.26 RCW.~~

~~((4)) (d) **Soft drinks and carbonated waters ((means all beverages, excluding liquor as defined by Title 66 RCW or rules and regulations of the Washington state liquor control board, but including fruit juices, milk, and all mixtures or dilutions of nonalcoholic beverages)),** Soft drinks are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume. Carbonated waters are nonalcoholic beverages, containing carbon dioxide, that do not contain natural or artificial sweeteners.~~

~~((5)) (e) **Beer and other malt beverages ((means)),** Beer and other malt beverages are all beverages defined as beer or malt liquor by Title 66 RCW or rules ((and regulations)) of the Washington state liquor control board.~~

~~((6)) (f) **Wine ((means)),** Wine includes all alcoholic beverages defined as wine in Title 66 RCW or rules ((and regulations)) of the Washington state liquor control board.~~

~~((7)) (g) **Newspapers and magazines ((means)),** Newspapers and magazines are all daily and periodical publications, including real estate guides, vehicle trader publications, free community newspapers, and the like.~~

~~((8)) (h) **Household paper and paper products ((means)),** Household paper and paper products are materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. ((H)) Household paper and paper products include((s also)) products or articles made from such sheets or leaves for home or other personal use, such as toilet tissue, paper cups, plates, napkins, cards, wrapping paper, stationery, personal banking checks or deposit slips, computer printer or copier paper, and the like.~~

~~((9)) (i) **Glass containers ((means)),** Glass containers are articles made wholly or in substantial part of processed silicates ((which)) that can be, or are, used to hold other things within themselves. Glass containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter~~

tax. Glass containers do not include containers that are produced to be sold at retail as empty reusable containers, such as drinking glasses, vases, and the like.

~~((10))~~ (j) Metal containers ~~((means))~~. Metal containers are articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and ((which)) that can be, or are, used to hold other things within themselves. Metal containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Metal containers do not include containers that are produced to be sold at retail as empty reusable containers, such as pots and pans, or metal containers made for transporting other products.

~~((11))~~ (k) Plastic or fiber containers made of synthetic material ~~((means articles which))~~. Plastic or fiber containers made of synthetic material will be referred to as plastic or fiber containers for purposes of this subsection (4)(k). Plastic or fiber containers are articles that can be, or are, used to hold other things within themselves and ((which)) that are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. ((H)) Plastic or fiber containers include((s)) containers made of paper, pasteboard, or cardboard in which the container materials consist((s)) of fibrous substances synthesized with other materials. Synthetic material ((means)) is material that is produced by synthesis, which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement. Plastic or fiber containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Plastic or fiber containers do not include containers that are produced to be sold at retail as empty reusable containers.

~~((12))~~ (l) Cleaning agents ~~((means))~~. Cleaning agents are all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things. Cleaning agents include packaged products and products sold in bulk form, as well as products sold in recyclable containers.

(m) Toiletries ~~((means))~~. Toiletries are all substances such as soap, powder, shampoo, cologne, perfume, cosmetics, toothpaste, ((ete-)) and the like, used in connection with personal dressing or grooming.

~~((13))~~ (n) Nondrug drugstore sundry products ~~((means))~~. Nondrug drugstore sundry products are all products((- goods, or articles, except drugs,)) sold by persons in ((a place of)) the business of selling drugs, ((but excluding)) except: Drugs, building materials, clothing, furniture, and appliances. For purposes of this section, "drug" has the same meaning as defined in RCW 82.08.0281.

("Place of business" for purposes of this rule means any location, department, or division even though it be a part of a larger business operation provided it is separate from such

other or additional business physically, operationally, and in its books and records. Thus, a department store which consists of a grocery department and a clothing department, each with its own space and having separate employees, cash registers, and accounting records would not be subject to the groceries litter tax on the sales of its clothing department merely because it was located in the same building and under the same ownership as the grocery department.

"Gross proceeds of the sales of the business" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction for costs or expenses. In the case of publishers of newspapers and magazines the measure of the litter tax is the same as specified in WAC 458-20-143 for business and occupation tax; i.e., gross income from the publishing business including advertising income.

The law intends that the tax be limited to sales within this state and therefore there may be deducted from the measure of the tax sales to persons in other states or transfers to points outside the state without sale. Out-of-state firms making sales in or into Washington will be subject to the litter tax under the principles set out for business and occupation tax in WAC 458-20-193B.

Persons operating drugstores may report and pay the litter tax measured by 50% of total sales in lieu of separately accounting for sales of drugstore sundry products. Persons operating grocery stores may report and pay the litter tax measured by 95% of total sales in lieu of separately accounting for grocery and nongrocery products sold.) (5) Exemptions. This subsection provides information about products listed under subsection (4) of this section that are exempt from litter tax as provided by RCW 82.19.050:

(a) Products for use and consumption out-of-state. The manufacture or sale of products for use and consumption outside the state:

(b) Agricultural products exempt from B&O tax. The value of products or gross proceeds of the sales by farmers exempt from tax under RCW 82.04.330:

(c) Certain wholesale sales by qualified grocery distribution cooperatives. The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(d) Food or beverages sold for indoor consumption. The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(e) Certain retail sales by caterers. Effective July 24, 2005, the sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer. For the purposes of this section, "prepared food" has the same meaning as provided in RCW 82.08.0293. "Nonsingle use container" and "caterer" have the meanings given in RCW 82.19.050.

**WSR 06-12-040**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed May 31, 2006, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-146.

Title of Rule and Other Identifying Information: WAC 388-478-0055 How much do I get for my state supplemental payments (SSP)?

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. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 11, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 12, 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](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., July 11, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 7, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule change would increase the payments to individuals residing in nursing facilities by \$2.06 per month.

Reasons Supporting Proposal: The rule change is necessary to increase state supplemental payments to individuals residing in nursing facilities by \$2.06 per month as mandated by section 207, chapter 372, Laws of 2006, the 2005-07 Revised Omnibus Operating Budget - 2006 Supplemental (ESSB 6386), signed by Governor Christine O. Gregoire on March 31, 2006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: Section 207, chapter 372, Laws of 2006.

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: Logan MacGregor, 1009 College S.E., Lacey, WA 98504, (360) 725-4605.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

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)(vi) which states in-part, "[t]his section does not apply to...rules that see fees or rates pursuant to

legislative standards." The proposed rule revises SSP rates pursuant to legislative standards in section 207, chapter 372, Laws of 2006.

May 24, 2006  
Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-01-045, filed 12/15/05, effective 1/15/06)

**WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?** (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) - Calendar Year 2005	\$46.00
Individual (blind as determined by SSA) - Calendar Year 2005	\$46.00
Individual with an ineligible spouse - Calendar Year 2005	\$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.
Medical institution	Monthly SSP Rate
Individual	<del>\$(21.62)</del> <u>23.68</u>

**WSR 06-12-050**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed June 2, 2006, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-077.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licensing, specifically WAC 308-96A-096 Registration requirements.

Hearing Location(s): Department of Licensing, Conference Room 104, 1125 Washington Street S.E., Olympia, WA 98507, on July 12, 2006, at 10:00 a.m.

Date of Intended Adoption: August 8, 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](mailto:dbrown@dol.wa.gov), fax (360) 902-0140, by July 11, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by July 11, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to make additions to the rule to include military spouses and dependents with valid licenses to be exempted from the requirement of a current Washington driver's license.

Reasons Supporting Proposal: To expand the rule to fit more with drivers rules on military exemptions.

Statutory Authority for Adoption: RCW 46.16.010.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045.

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.

June 1, 2006

Julie Knittle, Administrator  
Title and Registration Services

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

**WAC 308-96A-096 Registration requirements. (1) What is required when registering a vehicle in Washington?**

(a) The name of each registered owner, (natural person or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's primary residence street address (at the choice of the registered owner, a mailing address if different from the residence address can also be given); and

(c) The primary secured party's mailing address; and

(d) For natural persons one of the following:

(i) Presentation of an unexpired Washington state driver's license; or

(ii) Certification that he or she is:

((\*) (A) A Washington resident who does not operate a motor vehicle on public roads; or

((\*) (B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

For purposes of this section, shared or joint ownership includes all registered owners shown on the active vehicle record.

(2) For the purposes of this section, "presents" means:

(a) In person, to bring and display the unexpired Washington state driver's license to the department or its agents and subagents and for each additional registered owner shown on the vehicle record, a photocopy of, or to provide in writing, the license number and expiration date from an unexpired Washington state driver's license.

(b) For internet transactions, to enter the license number and expiration date from an unexpired Washington state driver's license.

(c) By mail, to provide in writing the license number and expiration date from an unexpired Washington state driver's license.

(3) For the purposes of this section, "valid and compelling" reasons include:

(a) Driving privilege has been withdrawn by the department or a court.

(b) A co-owner is not available. Circumstances to include, but not be limited to, being incarcerated or out-of-state due to work assignment or personal need.

(c) A co-owner is deceased.

(d) Persons who are divorced and the registered owner awarded the vehicle presents a divorce decree showing the vehicle was awarded to them.

(e) Active military stationed in a foreign country or otherwise not available to provide the information.

(f) Military personnel who are at least sixteen years of age, including a spouse or dependent, who have in their immediate possession a valid driver's license issued by the jurisdiction designated as their home of record.

(g) Other reasons determined by the director or his or her designee to be valid and compelling.

(4) For the purposes of this section, a "natural person" may be a resident of this state even though that person has or claims residency in another state or intends to leave this state at some future time. A natural person will be presumed a resident if at least two of the following conditions are met:

(a) You maintain a residence in this state for personal use;

(b) You have a Washington state driver's license or a Washington state resident hunting or fishing license;

(c) You use a Washington state address for federal income tax or state tax purposes;

(d) You have previously maintained a residence in this state for personal use and have not established a permanent residence outside the state of Washington (for example, a person who retires and lives in a motor home or vessel which is not permanently attached to any property);

(e) You claim this state as residence for obtaining eligibility to hold a public office or for judicial actions;

(f) You are a custodial parent with a child attending public school in this state;

(g) The department may consider factors other than those listed in this subsection to determine that a person intends to be located in or be a resident of this state. However, the department may not consider those factors alone to presume residency;

(h) A natural person who is a resident of Washington may not form a corporation, trust or other entity in another jurisdiction for the purpose of evading Washington vehicle registration.

(5) When registering a vehicle with joint or shared ownership, you must present the following for each registered owner shown on the active vehicle record:

(a) The license number from an unexpired Washington state driver's license; or

(b) Certification that you or the co-owner is a Washington resident who does not operate a motor vehicle on public roads; or

(c) Certificate that you or the co-owner is exempt from the requirement to obtain a Washington driver's license under RCW 46.20.025.

**WSR 06-12-051**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 2, 2006, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-090.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc. and chapter 308-93 WAC, Vessel registration and certificates of title; WAC 308-56A-310 Personal property—Chattel, landlord, 308-93-445 Personal property—Chattel, landlord; and new sections WAC 308-56A-311 Personal property lien—Landlord's lien for rent, 308-56A-312 Personal property lien—Self-service storage facilities, 308-93-446 Personal property lien—Landlord's lien for rent, and 308-93-447 Personal property lien—Self-storage facilities.

Hearing Location(s): Department of Licensing, Conference Room, 1125 Washington Street S.E., Olympia, WA 98507, on July 25, 2006, at 10:00 a.m.

Date of Intended Adoption: August 22, 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](mailto:dbrown@dol.wa.gov), fax (360) 902-0140, by July 24, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by July 24, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to make additions to the rule to comply with ESSB 5204, 59th legislative regular session, expanding the requirements to transfer title.

Reasons Supporting Proposal: We have added new sections to separate chattel liens, personal property lien - landlord's lien for rent, and personal property lien - self-service storage facilities.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045.

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.

June 1, 2006

Julie Knittle, Administrator  
Title and Registration Services

AMENDATORY SECTION (Amending WSR 01-21-071, filed 10/18/01, effective 11/18/01)

**WAC 308-56A-310 Personal property lien—Chattel(~~(-landlord)~~).** (1) **What is a chattel lien?** For the purposes of this section a (~~(<sup>u</sup>)~~)chattel lien(~~(<sup>u</sup> means: A lien obtained by any person, firm or company who provides services or materials for a vehicle at the owner's request, in the event of nonpayment by the owner. A person or firm that provides services or material for a vehicle at the owner's request may obtain a lien on such vehicle. In the event of nonpayment the lien may be foreclosed as provided by law)~~) is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What documents (~~(does the department require to issue)~~) are required to obtain a certificate of ownership for a vehicle (~~(obtained through the chattel lien process)~~)?** (~~(In addition to other documents required by law or rule the department requires:)~~) The required documents include:

(a) A completed affidavit of sale chattel(~~(/landlord)~~) lien form provided or approved by the department; (~~(or)~~) and

(b) A certified copy of (~~(a court order awarding the vehicle to the claimant)~~) the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail to the registered and legal owners of record; and

(d) A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owners of the lien filing; and

(e) Affidavit of service by mail; and

(f) Application for certificate of ownership; and

(g) Other documents that may be required by law or rule.

(3) **When is a court order required (~~(by the department)~~) to issue a certificate of ownership as a result of a chattel lien?** A Washington court order is required when:

(a) The vehicle is no longer in the possession of the person(~~(/business who is)~~) claiming the chattel(~~(/landlord)~~) lien; or

(b) Someone other than the owner of record requested the services; or

(c) There is ~~((an existing lien holder on record))~~ no record of the vehicle on file with the department; or

~~((i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:~~

~~(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or~~

~~(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.~~

~~(d) There is more than one lien claimed against the vehicle.~~

~~(i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:~~

~~(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or~~

~~(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.))~~

**(4) What ~~((is a landlord))~~ laws regulate chattel liens?** ~~((For the purposes of vehicle licensing and titling, a landlord lien is an encumbrance on a vehicle as security for the payment of moneys owing for rent.~~

~~(5) What documents does the department require to issue a certificate of ownership for a vehicle, obtained through the landlord lien process? In addition to other documents required by law or rule the department requires:~~

~~(a) A completed affidavit of sale chattel/landlord lien form provided or approved by the department; or~~

~~(b) A copy of a court order awarding the vehicle to the claimant.~~

~~(6) When does the department require a court order to issue a certificate of ownership as a result of a landlord lien? A court order is required when:~~

~~(a) The vehicle is no longer in the possession of the person/business who is claiming the landlord lien; or~~

~~(b) The vehicle owner of record is someone other than the person owing for rent; or~~

~~(c) There is an existing lien holder on record.~~

~~(i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:~~

~~(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or~~

~~(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.~~

~~(d) There is more than one lien against the vehicle.~~

~~(i) In order to remove any existing lien holders from the record, the court order must specifically authorize the removal of any lien. If it does not, the claimant may:~~

~~(A) Negotiate with the lien holders to obtain either a release of interest or a new security agreement; or~~

~~(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.~~

~~(7) Why is a court order required for a landlord lien if there is a lien holder on the existing record? In order to record a secured interest on a Washington certificate of ownership, there must be a security agreement between the registered owner and the legal owner except for government liens as provided in law.)) Chapter 60.08 RCW regulates chattel liens.~~

#### NEW SECTION

**WAC 308-56A-311 Personal property lien—Landlord's lien for rent.** (1) **What is a landlord's lien for rent?** For the purposes of this chapter, a landlord's lien for rent is a process by which a landlord may sell or take ownership of a tenant's vehicle as security for rent due.

(2) **What documents are required to issue a certificate of ownership for a vehicle obtained through the landlord's lien for rent process?** The required documents include:

(a) A completed affidavit of landlord lien form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a landlord's lien for rent?** A Washington court order is required when there is no record of the vehicle on file with the department.

(4) **What laws regulate landlords' lien for rent?** Chapters 59.18, 60.10, and 60.72 RCW regulate landlord liens for rent.

#### NEW SECTION

**WAC 308-56A-312 Personal property lien—Self-service storage facilities.** (1) **What is a self-service storage facilities lien?** For the purposes of this chapter, a self-storage facilities lien is a process by which the owner of a self-storage facility may sell a vehicle stored at the facility as security for rent or other charges due.

(2) **What documents are required to obtain a certificate of ownership for a vehicle obtained through the self-service storage facilities lien process?** The required documents include:

(a) A completed affidavit of self-storage facilities lien sale form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a self-service storage facilities lien?**

(a) The vehicle is no longer in the possession of the person who is claiming the self-service storage facilities lien; or

(b) There is an existing lien holder on the vehicle record;

or

(c) There is no record of the vehicle on file with the department.

(4) **What law regulates self-service storage facilities liens?** Chapter 19.150 RCW regulates self-storage facilities liens.



AMENDATORY SECTION (Amending WSR 01-21-071, filed 10/18/01, effective 11/18/01)

**WAC 308-93-445 Personal property lien—Chattel((; landlord)).** (1) **What is a chattel lien?** For the purposes of this ((section)) chapter, a ((("))chattel lien((" means)) is a process by which a person may sell or take ownership of a vessel when: ((A lien obtained by any person, firm or company who provides services or materials for a vessel at the owner's request, in the event of nonpayment by the owner. A person or firm that provides services or material for a vessel at the owner's request may obtain a lien on such vessel. In the event of nonpayment the lien may be foreclosed as provided by law.))

(a) They provide services or materials for the vessel at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What ((documentation does the department require)) documents are required to issue a certificate of ownership for a vessel ((obtained through the chattel lien process))?** ((In addition to other documents required by law or rule, the department requires:)) The required documents include:

(a) A completed affidavit of sale chattel((/landlord)) lien form provided or approved by the department; ((or)) and

(b) A certified copy of ((a court order awarding the vessel to the claimant)) the lien filing that is filed with the county auditor; and

(c) A copy of the letter sent by the lien applicant via first class mail to the registered and legal owner; and

(d) A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owner notifying the current registered and legal owner of the lien filing, and an affidavit of service by mail; and

(e) Application for certificate of ownership; and

(f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required ((by the department)) to issue a certificate of ownership as a result of a chattel lien?** A court order is required when:

(a) The vessel is no longer in the possession of the person((/business who is)) claiming the chattel((/landlord)) lien; or

(b) Someone other than the owner of record requested the services; or

(c) There is ((an existing lien holder on record; or

In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved; or

(d) There is more than one lien claimed against the vessel.

In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved)) no record of the vessel on file with the department.

(4) **What ((is a landlord)) laws regulate chattel liens?** ((For the purposes of vessel licensing and titling, a landlord lien is an encumbrance on a vessel as security for the payment of moneys owed for rent.

(5) **Can a landlord lien be attached to a vessel adrift? Vessels adrift as defined in RCW 88.26.020 do not qualify for landlord liens.**

(6) **Can a landlord lien be attached to a vessel moored in a private marina? No, lien foreclosures are defined in RCW 60.10.020 and 61.10.023.**

(7) **What documents does the department require to issue a certificate of ownership for a vessel obtained through the landlord lien procedure? In addition to other documents required by law or rule the department requires:**

(a) A completed affidavit of sale chattel/landlord lien form provided or approved by the department; or

(b) A copy of a court order awarding the vessel to the claimant:

In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with a secured party to obtain either a release of interest or a new security agreement; or

(ii) Petition the original court that issued the order, or higher court, to have the matter of secured interest resolved.

(8) **When does the department require a court order to issue a certificate of ownership as a result of a landlord lien? A court order is required when:**

(a) The vessel is no longer in the possession of the person/business who is claiming the landlord lien; or

(b) The vessel owner of record is someone other than the person owing for rent; or

(c) There is an existing lien holder on record.

In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(d) There is more than one lien against the vessel.

In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(9) **Why is a court order required for a landlord lien if there is a lien holder on the existing record? In order to record a security interest on a Washington certificate of ownership, there must be a security agreement between the registered owner and the legal owner except for government liens as provided in law. The security agreement on record was not**

established between the legal owner and the new applicant.)  
Chapters 60.08 and 60.10 RCW regulate chattel liens.

#### NEW SECTION

**WAC 308-93-446 Personal property lien—Landlord's lien for rent.** (1) **What is a landlord's lien for rent?** For the purposes of this chapter, a landlord's lien for rent is a process by which a landlord may sell or take ownership of a tenant's vessel as security for rent due.

This chapter does not apply to vessels (including transient vessels) moored or stored at a private moorage facility (see chapter 88.26 RCW).

(2) **What documents are required to issue a certificate of ownership for a vessel obtained through the landlord's lien for rent process?** The required documents include:

- (a) A completed affidavit of landlord lien form provided or approved by the department;
- (b) Application for certificate of ownership; and
- (c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a landlord's lien for rent?** A Washington court order is required when there is no record of the vessel on file with the department.

(4) **What laws regulate landlord's liens for rent?** Chapters 58.18, 60.10, and 60.72 RCW regulate landlord's liens for rent.

#### NEW SECTION

**WAC 308-93-447 Personal property lien—Self-service storage facilities.** (1) **What is a self-service storage facilities lien?** A self-service storage facilities lien is a process by which the owner of a self-service storage facility may sell a vessel stored at the facility as security for rent or other charges due.

(2) **What documentation is required to obtain a certificate of ownership for a vessel obtained through the self-service storage facilities lien process?** The required documents include:

- (a) A completed affidavit of self-service storage facilities lien form provided or approved by the department;
- (b) Application for certificate of ownership; and
- (c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a self-service storage facilities lien?**

(a) The vessel is no longer in the possession of the person who is claiming the self-service storage facilities lien; or

(b) There is an existing lien holder on the vessel record; or

(c) There is no record of the vessel on file with the department.

(4) **What law regulates self-service storage facilities liens?** Chapter 19.150 RCW regulates self-service storage facilities liens.

#### **WSR 06-12-058**

#### **PROPOSED RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed June 2, 2006, 1:26 p.m.]

Supplemental Notice to WSR 06-11-012.

Preproposal statement of inquiry was filed as WSR 06-07-105.

Title of Rule and Other Identifying Information: WAC 390-37-090 relating to informal settlement, cases resolvable by stipulation prior to enforcement hearing.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 29, 2006, at 11:30 a.m.

Date of Intended Adoption: June 29, 2006.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 26, 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: Delay in starting time from 9:30 a.m. to 11:30 a.m. on June 29, 2006.

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.

June 2, 2006

Vicki Rippie

Executive Director

#### **WSR 06-12-062**

#### **PROPOSED RULES**

#### **HIGHER EDUCATION COORDINATING BOARD**

[Filed June 5, 2006, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-057.

Title of Rule and Other Identifying Information: Residency classification for higher education student classification. The proposed change would amend the rules pertaining to the eligibility for "resident" status for tuition and fee purposes at public institutions of higher education within Washington. Specifically, the amendment would strike language specifying federally recognized tribes whose members would qualify for resident tuition and instead refer institutions to the list of tribes maintained by the governor's office on Indian affairs to determine eligibility.

Hearing Location(s): Higher education coordinating board, on July 19, 2006, at 1:00 to 3:00 p.m.

Date of Intended Adoption: September 28, 2006.

Submit Written Comments to: Randy Spaulding, Ph.D., 917 Lakeridge Way S.W., Olympia, WA 98504, e-mail randys@hecb.wa.gov, fax (360) 753-7808, by August 11, 2006.

Assistance for Persons with Disabilities: Contact Belma Villa by August 11, 2006, (360) 753-7810.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1607 changed the eligibility for "resident" status for tuition and fee purposes of tribal members. The legislation struck a specific listing of eligible tribes in statute and replacing it with a definition of eligible federally recognized tribes whose "traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the state of Washington."

Rather than recreate a list of eligible tribes in the Washington Administrative Code that may become outdated requiring future code revisions, the proposed rule change would instruct institutions to reference the official list of federally recognized Washington tribes maintained by the governor's office on Indian affairs to determine eligibility. The list of federally recognized Washington tribes may be found online at <http://www.goia.wa.gov/>.

Statutory Authority for Adoption: RCW 28B.15.0131.

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

Name of Proponent: Higher education coordinating board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Randy Spaulding, 917 Lakeridge Way S.W., Olympia, WA, (360) 753-7823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule change is a technical change required due to a change in the RCW and would apply to public higher education institutions in the determination of residence status of students.

A cost-benefit analysis is not required under RCW 34.05.328. The rule change removes the list of eligible tribes from the WAC and refers institutional staff to a list maintained by the governor's office. No fiscal impact is anticipated.

June 5, 2006

Randy Spaulding, Ph.D.  
Director, Academic Affairs

**AMENDATORY SECTION** (Amending WSR 03-20-053, filed 9/26/03, effective 10/27/03)

**WAC 250-18-020 Student classification.** (1) For a student to be classified as a "resident" for tuition and fee purposes, he or she must prove by evidence of a sufficient quantity and quality to satisfy the institution that he or she:

(a)(i) Has established a bona fide domicile in the state of Washington primarily for purposes other than educational for the period of one year immediately prior to commencement of the first day of the semester or quarter for which he or she has registered at any institution; and

(ii) Is financially independent; or

(b) Is a dependent student, one or both of whose parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution provided that any student who has spent at least seventy-five percent of both his

or her junior and senior years in high school in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who has enrolled in a public institution of higher education within six months of leaving high school, shall be considered a resident only for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year; or

(c) Is a person who has completed the full senior year of high school and obtained a high school diploma - both at a Washington public or private high school approved under chapter 28A.195 RCW (or who has received the equivalent of a diploma). The person must have lived in Washington at least three years immediately prior to receiving the diploma (or its equivalent), and lived continuously in Washington state after receiving the diploma (or its equivalent) until the time of admittance to an institution of higher education (defined as a public university, college, or community college within the state of Washington). In addition, the person must provide an affidavit to the institution indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so. Furthermore, the individual must indicate a willingness to engage in other activities necessary to acquire citizenship, including, but not limited to, citizenship or civics review courses; or

(d) Is a student who is on active military duty stationed in the state, or who is a member of the Washington national guard; or

(e) Is the spouse or dependent of an active duty military person stationed in the state of Washington; or

(f) Is a student who resides in Washington and is the spouse or dependent of a member of the Washington national guard; or

(g) Is a student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition program agreement under RCW 28B.15.725; or

(h) Is a student domiciled for one year in one or a combination of the following states: Idaho, Montana, Oregon, or Washington, and is a member of ~~((one of the following American Indian tribes:~~

~~(i) Colville Confederated Tribes;~~

~~(ii) Confederated Tribes of the Chehalis Reservation;~~

~~(iii) Hoh Indian Tribe;~~

~~(iv) Jamestown S'Klallam Tribe;~~

~~(v) Kalispel Tribe of Indians;~~

~~(vi) Lower Elwha Klallam Tribe;~~

~~(vii) Lummi Nation;~~

~~(viii) Makah Indian Tribe;~~

~~(ix) Muckleshoot Indian Tribe;~~

~~(x) Nisqually Indian Tribe;~~

~~(xi) Nooksack Indian Tribe;~~

~~(xii) Port Gamble S'Klallam Community;~~

~~(xiii) Puyallup Tribe of Indians;~~

~~(xiv) Quileute Tribe;~~

~~(xv) Quinault Indian Nation;~~

~~(xvi) Confederated Tribes of Salish Kootenai;~~

~~(xvii) Sauk-Suiattle Indian Nation;~~

~~(xviii) Shoalwater Bay Indian Tribe;~~  
~~(xix) Skokomish Indian Tribe;~~  
~~(xx) Snoqualmie Tribe;~~  
~~(xxi) Spokane Tribe of Indians;~~  
~~(xxii) Squaxin Island Tribe;~~  
~~(xxiii) Stillaguamish Tribe;~~  
~~(xxiv) Suquamish Tribe of the Port Madison Reserva-~~  
~~tion;~~  
~~(xxv) Swinomish Indian Community;~~  
~~(xxvi) Tulalip Tribes;~~  
~~(xxvii) Upper Skagit Indian Tribe;~~  
~~(xxviii) Yakama Indian Nation;~~  
~~(xxix) Coeur d'Alene Tribe;~~  
~~(xxx) Confederated Tribes of Umatilla Indian Reserva-~~  
~~tion;~~  
~~(xxxi) Confederated Tribes of Warm Springs;~~  
~~(xxxii) Kootenai Tribe; and~~  
~~(xxxiii) Nez Perce Tribe))~~ a federally recognized tribe  
whose traditional and customary tribal boundaries included  
portions of the state of Washington, or whose tribe was  
granted reserved lands within the state of Washington. The  
official list of federally recognized Washington tribes main-  
tained by the governor's office of Indian affairs shall be used  
to determine eligibility.

(i) Is a student who is a resident of Oregon residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county. The student must meet the following conditions:

(i) Is eligible to pay resident tuition rates under Oregon laws and has been domiciled in one or more of the designated Oregon counties for at least ninety days immediately prior to enrollment at a community college located in the following Washington counties: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla; or

(ii) Is a student enrolled for eight credits or less at the Tri-Cities branch or Vancouver branch of Washington State University.

(2) A student shall be classified as a "nonresident" for tuition and fee purposes if he or she does not qualify as a resident student under the provisions of subsection (1) of this section. A nonresident student shall include a student if he or she:

(a) Will be financially dependent for the current year or was financially dependent for the calendar year prior to the year in which application is made and who does not have a parent or legally appointed guardian who has maintained a bona fide domicile in the state of Washington for one year immediately prior to the commencement of the semester or quarter for which the student has registered at an institution;

(b) Attends an institution with financial assistance provided by another state or governmental unit or agency thereof wherein residency in that state is a continuing qualification for such financial assistance, such nonresidency continuing for one year after the completion of the quarter or semester for which financial assistance is provided. Such financial assistance relates to that which is provided by another state, governmental unit or agency thereof for direct or indirect educational purposes and does not include retirements, pen-

sions, or other noneducational related income. A student loan guaranteed by another state or governmental unit or agency thereof on the basis of eligibility as a resident of that state is included within the term "financial assistance;"

(c) Is not a citizen of the United States of America, unless such person holds permanent or temporary resident immigration status, "refugee - parolee," or "conditional entrant" status or is not otherwise permanently residing in the United States under color of law and further meets and complies with all applicable requirements of WAC 250-18-030 and 250-18-035.

(3) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington.

(4) Any resident dependent student who remains in this state when such student's parents or legal guardians, having theretofore been domiciled in this state for a period of one year immediately prior to commencement of the first day of the semester or quarter for which the student has registered at any institution, move from this state, shall be entitled to continued classification as a resident student so long as such student is continuously enrolled during the academic year.

## WSR 06-12-064

### PROPOSED RULES

### HORSE RACING COMMISSION

[Filed June 5, 2006, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-040.

Title of Rule and Other Identifying Information: WAC 260-80-140 Disturbing the peace.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on July 13, 2006, at 9:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by July 10, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will remove ambiguous language and make the rule clearer.

Reasons Supporting Proposal: Supports the governor's executive order on writing rules in clear language.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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. Not applicable.

May 22, 2006  
R. M. Leichner  
Executive Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-80-140 Disturbing the peace.** ~~((No person shall in any manner, or at any time, disturb the peace or make himself obnoxious on the grounds of an association.))~~ A person may not disturb the peace while on association grounds.

**WSR 06-12-076**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2006-01—Filed June 6, 2006, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-096.

Title of Rule and Other Identifying Information: Implementation of underwriting laws in 2SHB 2292, Health care liability reform.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on July 19, 2006, at 9:00 a.m.

Date of Intended Adoption: August 1, 2006.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by July 18, 2006.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by July 17, 2006, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections 211, 212 and 213, chapter 8, Laws of 2006, change the underwriting standards that medical malpractice insurers must use. Subsection (3) of section 211, Laws of 2006, requires the commissioner to adopt rules that define the components of a risk profile that are subject to the law.

These rules:

1. Add definitions for clarity;
2. Explain what types of information insurers must provide when they notify their insured of the characteristics that adversely affect their insurability; and
3. Explain the use of substantive underwriting factors in medical malpractice insurance underwriting.

Reasons Supporting Proposal: Subsection (3) of section 211, Laws of 2006, requires the commissioner to adopt rules that define the components of a risk profile that are subject to the law. Medical malpractice insurers need rules to assist them when they take underwriting actions that are subject to this law.

Statutory Authority for Adoption: RCW 48.02.060, sections 211, 212 and 213, chapter 8, Laws of 2006.

Statute Being Implemented: Sections 211, 212 and 213, chapter 8, Laws of 2006.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Smego, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7134; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0257 [98504-0255], (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because this rule does not impose more than minor costs on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are interpretive as defined in RCW 34.05.328.

June 6, 2006  
Mike Kreidler  
Insurance Commissioner

**Chapter 284-20A WAC**

**RULES THAT APPLY TO INSURERS THAT UNDERWRITE MEDICAL MALPRACTICE INSURANCE**

NEW SECTION

**WAC 284-20A-010 Purpose.** This chapter describes the underwriting restrictions that apply to medical malpractice insurers under sections 211, 212 and 213, chapter 8, Laws of 2006.

NEW SECTION

**WAC 284-20A-020 Definitions that apply to sections 211, 212 and 213, chapter 8, Laws of 2006 and this chapter.** The definitions in section 211(1), chapter 8, Laws of 2006 apply to this chapter. In addition, the definitions in this section apply throughout the chapter:

- (1) "**Classification plan**" means a plan to formulate different premiums for the same coverage based on group characteristics.
- (2) "**Medical malpractice**" has the same meaning as in section 201(9), chapter 8, Laws of 2006.
- (3) "**Premium**" has the same meaning as in RCW 48.18.170.
- (4) "**Provider**" includes both a facility and provider as defined in section 201 (6) and (7), chapter 8, Laws of 2006.

(5) **"Rate"** means the cost of insurance per exposure unit.

(6) **"Rating rule"** means a factor, formula, rule or procedure used to calculate premium. Rating rules include, but are not limited to:

- (a) Experience rating plans;
- (b) Rating factors or tiers;
- (c) Surcharge or discount rules; and
- (d) Schedule rating plans.

(7) **"Risk profile"** means characteristics of a provider that increase or decrease the potential for future medical malpractice claims that may fall in the scope of coverage of a medical malpractice insurance policy.

(8) **"Significant risk factor"** means a material element of the insured's risk profile that either contributed to or resulted in an adverse underwriting action by a medical malpractice insurer.

(9) **"Substantive underwriting factor"** means a factor that is very important to an underwriting decision. Examples of a substantive underwriting factor include, but are not limited to:

- (a) Criminal acts, including sexual misconduct;
  - (b) Change in financial condition;
  - (c) Change in operations, such as turnover of management or professional staff;
  - (d) Providing information necessary to underwrite the policy;
  - (e) Complying with loss control or loss prevention recommendations;
  - (f) History of claims;
  - (g) Investigations or disciplinary action by the department of health;
  - (h) Performing procedures within the scope of an individual's license and/or training;
  - (i) Substance abuse;
  - (j) Proper facilities and adequate maintenance of equipment; or
  - (k) Adequate training program for staff.
- (10) **"Underwriting process"** means any series of actions that produce an underwriting decision that affects a provider.

#### NEW SECTION

**WAC 284-20A-030 Information a medical malpractice insurer must provide if the insurer takes an underwriting action adverse to an insured.** (1) Insurers develop classification and rating plans that group, for rating purposes, risks that have similar insuring, risk and exposure factors. RCW 48.18.480 permits fair discrimination between dissimilar risks. If a provider has characteristics that increase the potential for future medical malpractice claims, the insurer must explain those significant risk factors to the provider.

(2) The insurer must explain each significant risk factor in clear and simple language. The explanation must provide enough detail so that the provider has enough information to understand why each risk factor adversely affects their:

- (a) Eligibility for insurance; or
- (b) Ability to buy insurance at the lowest premium or rate.

(3) Insurers do not have to provide notice if:

- (a) The provider asks for product options that increase premium or reduce coverage, such as:
  - (i) Deductible or retention changes;
  - (ii) Increased coverage limits; or
  - (iii) Coverage options.
- (b) The provider changes their business in a way that increases exposure, such as adding staff or types of services performed; or
- (c) The classification plan includes rating rules that result in automatic premium increases, such as step-rating increase.

#### NEW SECTION

**WAC 284-20A-040 Use of "substantive underwriting factors" when underwriting new or existing medical malpractice insurance policies.** (1) The definition of "underwriting" in section 211 (1)(e), chapter 8, Laws of 2006 is broad, and includes selecting, rejecting and pricing a risk. Underwriting occurs when a provider first applies for insurance and when the insurer evaluates the provider for renewal purposes.

(2) Insurers are prohibited from considering the factors listed in section 211(2), chapter 8, Laws of 2006 during any underwriting process unless the insurer can demonstrate that other substantive underwriting factors were also considered. Upon request by the commissioner, an insurer must demonstrate that a completed underwriting process complies with section 211(2), chapter 8, Laws of 2006. Insurers must retain documentation of each underwriting process for three years.

#### NEW SECTION

**WAC 284-20A-060 What constitutes a medical malpractice insurance policy for the purposes of RCW 48.18-290 (1)(b) and 48.18.2901 (1)(a)(ii)?** A medical malpractice insurance policy means an insurance policy written with the principal intent to provide medical malpractice insurance. For the purposes of this section, a policy does include medical malpractice insurance written as ancillary coverage to a general liability or package policy if the principal exposure insured is not medical malpractice.

#### **WSR 06-12-078**

#### **WITHDRAWAL OF PROPOSED RULES ATTORNEY GENERAL'S OFFICE**

(By the Code Reviser's Office)

[Filed June 6, 2006, 11:45 a.m.]

WAC 44-10-05001, 44-10-05002 and 44-10-05004, proposed by the office of the attorney general in WSR 05-23-166 appearing in issue 05-23 of the State Register, which was distributed on December 7, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 06-12-079**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 6, 2006, 1:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-081.

Title of Rule and Other Identifying Information: New WAC 415-110-605 Do I qualify for retirement from Plan 3? and amending WAC 415-112-502 Do I qualify for retirement from Plan 3?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on July 11, 2006, at 11:00 a.m.

Date of Intended Adoption: July 12, 2006.

Submit Written Comments to: Leslie L. Saeger, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov), fax (360) 753-3166, by 5:00 p.m., on July 11, 2006.

Assistance for Persons with Disabilities: Contact Leslie L. Saeger, Rules Coordinator, by June 30, 2006, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is implementing SHB 2684. Currently Plan 3 members may retire with an unreduced benefit at age sixty-five with at least five service credit years, including twelve service credit months after attaining age fifty-four. SHB 2684 changed the age threshold for earning twelve service credit months to age forty-four.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: For WAC 415-110-605 is RCW 41.35.680 and for WAC 415-112-502 is RCW 41.32.-875.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Saeger, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

June 5, 2006  
 Leslie Saeger  
 Rules Coordinator

NEW SECTION

**WAC 415-110-605 Do I qualify for retirement from Plan 3?** (1) You may retire from Plan 3:

(a) At age sixty-five with an unreduced defined benefit with the following amounts of service credit:

(i) Ten years of service credit;  
 (ii) Five years of service credit, including at least twelve service credit months after attaining age forty-four; or  
 (iii) Five years of Plan 2 service credit earned prior to September 1, 2000, before transferring to Plan 3 under RCW 41.35.510;

(b) At age fifty-five with a minimum of ten years of service credit; however, your defined benefit will be actuarially reduced to reflect the difference in the number of years between your age at retirement and age sixty-five; or

(c) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year for each year between your age at retirement and age sixty-five.

(2) Under RCW 41.35.010 (7)(c), you may use up to forty-five days of unused sick leave to meet service credit requirements.

(a) Forty-five days of unused sick leave is equal to two service credit months. Less than forty-five days is creditable as specified in RCW 41.35.010 (7)(c).

(b) Unused sick leave may not be used to meet age requirements.

(c) The sick leave used is forfeited, and may not be cashed out.

(d) The value of the sick leave will not be included in your AFC or used to determine the amount of your retirement benefit.

Example: On December 31, 2005, John is age sixty-five and has four years and ten months of service credit. John has forty-five days of sick leave. John may use the forty-five days of sick leave to qualify for retirement effective January 1, 2006.

(3) See RCW 41.35.680.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-110-320	Determining SERS Plan 3 defined benefit retirement eligibility.
-----------------	---

AMENDATORY SECTION (Amending WSR 05-12-108, filed 5/27/05, effective 6/27/05)

**WAC 415-112-502 Do I qualify for retirement from Plan 3?** You may retire from Plan 3:

(1) At age sixty-five with the following amounts of service credit to retire with an unreduced defined benefit:

(a) Ten years of service credit; or

(b) Five years of service credit, including at least twelve service credit months after attaining age ((~~forty-four~~) forty-four); or

(c) Five years of TRS Plan 2 service credit earned prior to July 1, 1996, before transferring to Plan 3 under RCW 41.40.750.

(2) At age fifty-five with a minimum of ten years of service credit, however, your defined benefit will be actuarially

reduced to reflect the difference in the number of years between your age at retirement and age sixty-five.

(3) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year to reflect the difference in the number of years between your age at retirement and age sixty-five.

See RCW 41.32.875.

**WSR 06-12-085**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)

[Filed June 6, 2006, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-145.

Title of Rule and Other Identifying Information: Sections of chapter 388-865 WAC, Community mental health and involuntary treatment programs, amending WAC 388-865-0105, 388-865-0150, 388-865-0205, 388-865-0245, 388-865-0275, 388-865-0430, 388-865-0440, 388-865-0452, 388-865-0466, 388-865-0468, and 388-865-0575.

In addition to these revisions, the mental health division anticipates additional rule making on the subject matter initiated by WSR 06-07-145, including but limited to, changes to WAC 388-865-0201 and 388-865-0203.

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. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 25, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 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](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by July 25, 2006, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 21, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Multiple sections of chapter 388-865 WAC are no longer accurate because of the changes made to chapters 71.24 and 71.05 RCW by ESSB [ESHB] 1290, ESSB 5763 and 2SSB 6793 (chapters 503 and 504, Laws of 2005, and chapter 333, Laws of 2006 respectively). Amended rules are needed to be consistent with the statutes.

The statutes changed the definition from "county designated mental health professional" to "designated mental health professional" - removing the reference to county. This is consistent with the other statutory changes that created the structure for allowing private entities to act as regional sup-

port networks (RSN). The rule changes remove the term "county" from designated mental health professional. The changes also implement the goal of allowing a private entity to become certified as an RSN.

Reasons Supporting Proposal: Amended rules are needed to be consistent with the statutes.

Statutory Authority for Adoption: RCW 71.24.035 and 71.05.560.

Statute Being Implemented: Chapters 71.24 and 71.05 RCW as amended by chapters 503 and 504, Laws of 2005, and chapter 333, Laws of 2006.

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 and Implementation: Paul DesJardien, P.O. Box 45320, Olympia, WA 98504-5230, (360) 902-0873.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The mental health division has analyzed the proposed rules and concludes that the rule changes proposed do not impose any additional compliance costs or administrative burdens on small businesses. Therefore, preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Paul DesJardien, P.O. Box 45320, Olympia, WA 98504-5230, phone (360) 902-0873, fax (360) 902-0809, e-mail [desjapp@dshs.wa.gov](mailto:desjapp@dshs.wa.gov).

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 06-13 issue of the Register.

**WSR 06-12-093**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)

[Filed June 6, 2006, 4:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-098.

Title of Rule and Other Identifying Information: HRSA medical assistance is amending WAC 388-542-0010 Purpose and scope of SCHIP (state children's health insurance program).

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. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 11, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 12, 2006.



Submit Written Comments to: DSHS Rules Consultant, 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., on July 11, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 7, 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: This is a technical correction, adding language to confirm that an unborn child is eligible for SCHIP coverage when the mother is ineligible for Medicaid.

Reasons Supporting Proposal: Clarifying the rule allows clients and providers to understand more fully the coverage available to SCHIP clients.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.450.

Statute Being Implemented: RCW 74.09.450, Title XXI of the Social Security Act.

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: Joanie Scotson, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not affected by this rule.

A cost-benefit analysis is not required under RCW 34.05.328. DSHS client eligibility rules for medical assistance are exempt from this requirement according to RCW 34.05.328 (5)[(b)](vii).

June 2, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-542-0010 Purpose and scope of SCHIP. (1)** The ~~((medical assistance administration (MAA)))~~ department administers the state children's health insurance program (SCHIP) to provide access to:

(a) Medical care for children whose family income exceeds the limit for Medicaid eligibility but is not greater than two hundred fifty percent of the federal poverty level (FPL)(-); and

(b) Prenatal care and medical services for a pregnant woman;

(i) Who is ineligible for Medicaid due to immigration status; and

(ii) Whose family income is at or below one hundred eighty-five percent FPL.

(2) SCHIP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450.

**WSR 06-12-096**

**PROPOSED RULES**

**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:16 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-135 What causes an individual's name to be removed from a layoff list?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This modification will clarify that an individual's name may be removed from a layoff list when they are appointed to a permanent position in the class that they were on the layoff list for or to a class with a higher salary range maximum.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This change is a clarification that an employee will only be removed from a layoff list if they are appointed to a permanent position.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

**WAC 357-46-135 What causes an individual's name to be removed from a layoff list?** (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series/occupational category.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series/occupational category.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer determines good and sufficient reason exists.

**WSR 06-12-097  
PROPOSED RULES  
DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:18 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-19-115 To which employer and position would an employee revert? and 357-19-285 What happens to an employee who fails to progress satisfactorily through an in-training plan?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes will clarify that when an employee fails to progress to the next step of an in-training plan they will have reversion rights in accordance with WAC 357-19-115 through 357-19-117.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

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: These changes are housekeeping in nature.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006  
Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-19-115 To which employer and position would an employee revert?** A permanent employee who does not satisfactorily complete the trial service period or a Washington management service (WMS) review period or has failed to progress to the next step of an in-training plan in accordance with WAC 357-19-285, has reversion rights with the current employer at the time of reversion. An employee has the right to revert to a position, if available, in accordance with the following:

(1) For employees reverting from trial service following a promotion, transfer or elevation, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies competencies and other position requirements and which is:

(c) Allocated to the class the employee last held permanent status in; or

(d) If no positions are available, allocated to a class which has the same or lower salary range maximum.

(2) For employees reverting from trial service following a voluntary demotion, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies the competencies and other position requirements and which is allocated to a class which has the same or lower salary range maximum as the class from which the employee is reverting.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-285 What happens to an employee who fails to progress satisfactorily through an in-training plan?**

This table is used to determine what happens when an employee appointed to an in-training position fails to satisfactorily progress through the in-training plan.

<b>Type of In-Training Position:</b>	
<b>Class Series/Occupational Category:</b> All positions in the occupational category/class series are designated as in-training positions by the employer	<b>Individual position:</b> The individual position is designated as an in-training position

<b>Employee Status:</b>		
<b>Employee in Probationary Period</b>	⇒ The employee must be separated in accordance with WAC 357-46-185.	⇒ The employee must be separated in accordance with WAC 357-46-185.
<b>Employee in Trial Service Period</b>	<p><i>If the employee WAS PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment.</p> <p><i>If the employee was NOT PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee must be dismissed under the provisions of WAC 357-40-010.</p>	<p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class in which the employee was most recently permanent.</p>
<b>Employee achieved permanent status in job class of the current in-training step but is failing to progress to the next step</b>	<p><i>If the employee WAS PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment.</p> <p><i>If the employee was NOT PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee must be dismissed under the provisions of WAC 357-40-010.</p>	<p>⇒ The employee is removed from the in-training position and has reversion rights in accordance with WAC 357-19-115 through 357-19-117. <u>The employee has reversion rights</u> to a position, if available, in the class in which the employee currently holds permanent status.</p>

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to this rule are to clarify when an agency can convert a nonpermanent appointment to a trial service appointment.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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 proposed change is housekeeping in nature and will clarify when an agency can convert a nonpermanent appointment to trial service.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006

Eva N. Santos

Director

**AMENDATORY SECTION** (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-400 Can the agency convert a general government nonpermanent appointment to a probationary or trial service appointment?** (1) When an agency uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the agency may change the status of the appointment to probationary or if the employee held permanent status prior to the nonpermanent appointment to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The agency needs to fill the position permanently.

~~((2) The agency may change the appointment status to trial service only if the employee held permanent status prior to accepting a nonpermanent appointment.))~~

(2) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

**WSR 06-12-098**

**PROPOSED RULES**

**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:20 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-19-400 Can the agency convert a general government nonpermanent appointment to a probationary or trial service appointment?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

**WSR 06-12-099**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:21 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-04-030 What right does an employee have to return to the classified service from exempt service?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change will clarify that when an employee returns to classified service from exempt WAC 357-19-200 and 357-19-205 will apply.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This change is housekeeping in nature.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006  
 Eva N. Santos  
 Director

AMENDATORY SECTION (Amending 05-01-203, filed 12/21/04, effective 7/1/05)

**WAC 357-04-030 What right does an employee have to return to the classified service from exempt service?** As required by RCW 41.06.070(3), any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance, the employee has the right to return to the highest class of position in which he/she previously held permanent status or to a position of similar nature and salary.

**WSR 06-12-100**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:21 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-042 What happens when it has been determined that a position no longer meets the definition of manager found in WAC 357-58-035?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to describe what happens when a Washington management service (WMS) position no longer meets the definition of manager.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This rule addresses what rules will apply when a WMS position is being reallocated to WGS.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006  
 Eva N. Santos  
 Director

NEW SECTION

**WAC 357-58-042 What happens when it has been determined that a position no longer meets the definition of manager found in WAC 357-58-035?** When an agency has determined that the duties of a position no longer meet the definition of manager, found in WAC 357-38-035, and is no longer appropriate in WMS, then provisions of WAC 357-58 no longer apply. The WGS rules on reallocation (WAC 357-13) will apply. The employee will retain existing status.

**WSR 06-12-101**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:22 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-325 When may a probationary or trial service period be served concurrently with the WMS review period? and 357-58-330 What happens when a general service employee serving a probationary or trial service period is appointed to a WMS position in a different agency?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is to correct an error in the second paragraph in WAC 357-58-325. The other changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: These changes are housekeeping a nature.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006  
 Eva N. Santos  
 Director

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-325** (~~When may a probationary or trial service period be served concurrently with the WMS review period?~~) **What happens when a WGS employee serving a probationary or trial service period is appointed to a WMS position within the same agency?** An employee who is appointed to a WMS position from a WGS position in the same agency while serving a probationary or trial service period in the same or similar occupational field may serve the

trial service or probationary period concurrently with the review period. At the discretion of the employer, the employee may attain permanent status in the previous job classification once the original probationary or trial service period concludes.

~~((The new))~~ If the positions are in the same or similar occupational field, the employer may allow for some or all of the time served in the ((review)) probationary or trial service period ((for the prior position)) to count towards the review period. ((The employee will not attain permanent status in the original position in the former agency unless agreed to in writing by the employers in both agencies.))

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-330** **What happens when a ((general service)) WGS employee serving a probationary or trial service period is appointed to a WMS position in a different agency?** If agreed to in writing by the employers in both agencies, a WGS employee who is appointed to a WMS position in a different agency in the same or similar occupational field while serving in a probationary or trial service period may serve the probationary or trial service period concurrently with the WMS review period. ~~((The employee will attain permanent status in the original WGS position upon completion of the probationary or trial service period.))~~ The employee will not attain permanent status in the previous job classification unless agreed to in writing by the employers in both agencies.

If the positions are in the same or similar occupational field, the new employer may allow for some or all of the time served in the probationary or trial service period for the WGS position to count towards the review period.

**WSR 06-12-102**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed June 7, 2006, 8:23 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-37-080 Can an employee request the director to review the performance evaluation process or procedure used for the employee's evaluation?

Hearing Location(s): Department of Personnel, Hearings Room, 2828 Capitol Boulevard, Olympia, WA 98504, on July 13, 2006, at 8:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by July 7, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by July 7, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed modification is a result of confusion between review rights for Washington general service (WGS) employees and Washington management service (WMS) employees.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: These changes are necessary because the current rules do not specify the differences between the review rights for the performance evaluation process between WGS and WMS employees.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

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

June 6, 2006  
Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-01-194, filed 12/21/04, effective 7/1/05)

**WAC 357-37-080 Can an employee request the director to review the performance evaluation process or procedure used for the employee's evaluation?** (1) As provided in WAC 357-49-010, and within thirty days of receipt of a completed and signed performance evaluation or the results of an employer review as provided in WAC 357-37-075, a(¶) WGS employee may request a director's review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules. The content of an evaluation is not subject to review.

(2) A WMS employee may request an internal agency review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules in accordance with the agency's WMS performance management procedures. The content of an evaluation is not subject to review.

**WSR 06-12-110**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 7, 2006, 9:57 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-260-9901 Water recreation facilities—Fees and 246-262-990 Recreational water contact facilities—Fees.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on July 11, 2006, at 1:30 p.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Gary Fraser, Office of Environmental Health and Safety, P.O. Box 47825, Olympia, WA 98504-7825, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2261, by July 11, 2006.

Assistance for Persons with Disabilities: Contact Gary Fraser by July 5, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules revise the fee structure for review of construction permits for water recreation facilities such as swimming pools, spa pools, wading pools and spray pools, as well as for recreational water park facilities such as water slides, wave pools and other innovative design features. The fee increases apply to the plan review process for proposed new facilities and to facilities that are proposing alterations, renovations, or modifications. The fee increases are intended to recover 100% of the cost of conducting the construction permit process. During the 2005 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor in ESSB 6090 (section 221(1)), chapter 518, Laws of 2005).

Reasons Supporting Proposal: The proposed fees provide the revenue necessary for the department of health (DOH) to conduct the plan review program. This program is essential to public health protection by assuring that proposed facilities are designed in accordance with the standards set forth in either chapter 246-260 WAC or in chapter 246-262 WAC as well as industry standards. Although some local health jurisdictions use their own staff for plan review in accordance with local regulations, most counties rely on the department of health to conduct the plan review function.

Statutory Authority for Adoption: RCW 70.90.150.

Statute Being Implemented: Chapter 70.90 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Larry Kirchner, 20435 72nd Avenue South, Kent, WA 98302, (253) 395-6754; Implementation and Enforcement: Gary Fraser, P.O. Box 47825, Olympia, WA 98504-7825, (360) 236-3073.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules that set or adjust fees pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328, 34.05.328 (5)(b)(vi), "significant rule anal-

ysis" does not apply to rules that set or adjust fees pursuant to legislative standards, as this proposal does.

June 5, 2006  
 Bob White  
 for Mary C. Selecky  
 Secretary

**AMENDATORY SECTION** (Amending WSR 03-14-146, filed 7/2/03, effective 8/2/03)

**WAC 246-260-9901 Fees.** (1) CONSTRUCTION PERMIT FEES. The department establishes the fees listed in Table

990.1 for construction permits for carrying out its duties under WAC ((246-260-030)) 246-260-021.

(a) The applicant must submit the base fee to the department prior to plan review initiation.

(b) Hourly charges for plan review will be charged regardless of whether the construction permit is issued or not.

(c) The department will issue the construction permit once full payment has been received.

(d) The applicant must pay the costs of a safety engineer to review plans when department determines need per WAC 246-260-021(4).

**TABLE 990.1  
 CONSTRUCTION PERMIT FEES**

TYPE OF FACILITY	CONSTRUCTION PERMIT PLAN REVIEW FEES
I. Swimming Pools ((a-125,000)) <u>100,000</u> gallons or more in volume	(( <del>\$ 568.00</del> )) <u>\$ 800.00 plus \$ 99/hr. for all hours of review time greater than 8 hours</u>
((b) <del>Greater than 75,000 gallons and less than 125,000 gallons</del> )	<del>\$ 339.00</del>
(c) <del>Greater than 40,000 gallons and less than 75,000 gallons</del>	<del>\$ 223.00</del>
(d) <del>Less than 40,000 gallons</del>	<del>\$ 170.00</del> )
II. <u>Swimming Pools less than 100,000 gallons, Spa Pools, and Recirculating Spray Pools</u>	(( <del>\$ 170.00</del> )) <u>\$ 400.00 plus \$ 99/hr. for all hours of review time greater than 4 hours</u>
III. <u>Wading Pools and Nonrecirculating Spray Pools</u>	(( <del>\$ 111.00</del> )) <u>\$ 200.00 plus \$ 99/hr. for all hours of review time greater than 2 hours</u>
(IV- <del>Spray Pools</del> )	<del>\$ 84.00</del> )
(V- <del>Alterations, renovations, or modifications to existing swimming, spa, wading or spray pools</del> )	(( <del>not to exceed two thirds of new construction permit fees, or \$68/hour (whichever is less)</del> )) <u>\$ 100.00 plus \$ 99/hr. for all hours of review time greater than 1 hour.</u>
(VI- <del>The fees for multiple pools at the same location will be based upon the highest fee for one facility and two thirds of the fee for each additional facility. For example: The fee for a 100,000-gallon swimming pool, a 60,000-gallon swimming pool, and a spa pool will be: \$339 + \$149 + \$113 = \$601. The fees for a small 30,000-gallon swimming pool and a spa pool will be \$170 + \$113 = \$283.</del> )	

(2) OPERATING PERMIT FEES The department establishes the fees listed in Table 990.2 for operating permits for carrying out its duties under WAC ((246-260-040)) 246-260-101.

**TABLE 990.2  
 FEE SCHEDULE  
 OPERATING PERMITS  
 Type + Number of Facilities**

	Single Swim Pool	Single Spa Pool	Single Wading Pool	Spray Pool or Pools	Each Additional Swim, Spa, or Wading Pool
Operating Permit 0-6 month	\$ 291.00	\$ 255.00	\$ 211.00	\$ 105.00	\$ 63.00
Operating Permit 6-12 months	\$ 477.00	\$ 424.00	\$ 371.00	\$ 159.00	\$ 84.00

## (3) Other Terms and Conditions:

- ((+)) (a) The department may charge an additional fee of \$87 plus associated laboratory costs for any inspections beyond those provided under the annual operating permit when necessary due to violations of such items as (a) noncompliance with water quality standards, and (b) failure to comply with operational requirements for health and safety.
- ((2)) (b) The department may charge an alternate annual fee for an operating permit based on direct and indirect costs associated with issuance of the permit when arrangements are made with local health jurisdictions to administer all or portions of the duties associated with the operating permit. Except, that the fee for this operating permit cannot exceed the cost established by the previous portions of this regulation, but the fee may be less.
- ((3)) (c) During the first year of development of the operating permit and for new pool facilities built hereafter, or pools temporarily closed (significant period of several months) and reopened, there are provisions for prorating the costs for the operating permits.
- ((4)) (d) A reduction in fees, up to but not exceeding thirty percent, may be granted by the department when a facility operator can demonstrate a satisfactory level of training in pool safety, water quality, maintenance and operations. The department will develop criteria for ~~(such)~~ these fee reductions within six months of the adoption of this regulation.
- ((5)) (e) For limited use facilities requiring operating permits which are serving less than fifteen living units, the operating permit shall be fifty percent of the fee. However, the department may charge a reinspection fee~~(s when)~~ if necessary~~(, will be charged as noted in condition (1))~~ under (a) of other terms and conditions.
- ((6)) (f) Fees for multiple facilities at the same physical location shall have a maximum FEE CAP as follows: Seasonal (0-6 months) WRF's: \$774 NOTE: The third and subsequent pool/spa at the same location will be charged \$51 for each ~~(such)~~ additional pool/spa.  
Year around (>6 months) WRF's \$1032 NOTE: The third and subsequent pool/spa at the same physical location will be charged \$67 for each ~~(such)~~ additional pool/spa.

## (4) Examples of Fees Charged:

- ((+)) (a) If more than one pool at a facility and one is a year-round pool and another is a seasonal pool—year-round pool is base cost, seasonal pool is charged at additional fee

charge. For example: Year-round spa = \$424 plus seasonal swimming pool is \$63 = \$487 total operating permits.

- ((2)) (b) If a single swimming pool and a single spa pool is used at the facility, the fee schedule will include fees as noted. For a 0-6 month permit, the primary fee for the single swimming would be \$291 and the spa pool would be viewed as the second pool at the facility and would have a fee of \$63, total operating permit fees would be \$354.

- ((3)) (c) If there are 12 pools/spas at a single year-around pool facility, the FEE CAP would apply and the maximum fee of \$1032 would be charged. (\$477 base fee, \$84 for first additional pool/spa, \$67 for the remaining ten year-around pools/spas (10 x \$67 = \$670)) Total fee before fee cap = \$477 + \$84 + \$670 = \$1231. After FEE CAP the total fee = \$1032. If approved training were credited to this facility for the maximum 30% discount, the 30% would be applied to the FEE CAP fee of \$1032; \$1032 - 30% = \$723.

AMENDATORY SECTION (Amending WSR 03-14-146, filed 7/2/03, effective 8/2/03)

**WAC 246-262-990 Fees.** (1) The fee for plan review of a new recreational water contact facility ~~((containing a single attraction))~~ shall be ~~((two))~~ four hundred ~~((six))~~ dollars base fee plus an hourly rate of ninety-nine dollars for all hours of review beyond four hours plus the safety engineer reviewer's cost as billed.

(a) The base fee must be provided to the department prior to initiating plan review.

(b) Hourly fees for plan review will be charged regardless of whether the plans are approved or not.

(c) The construction permit will not be issued until after full payment is received.

(2) ~~((The fee for plan review of a new recreational water contact facility containing more than one attraction shall be two hundred six dollars plus the cost of the safety engineer reviewer's cost as billed plus seventy seven dollars for each attraction.~~

~~((3))~~ The fee for review of plans for alterations or modifications of an existing recreational water contact facility shall be the ~~((total of direct and indirect costs, not to exceed one half of the fee for review of a new project))~~ hourly rate of ninety-nine dollars.

~~((4))~~ (3) The annual fee for an operating permit for a recreational water contact facility containing one attraction shall be one hundred eighty dollars.

~~((5))~~ (4) The annual fee for an operating permit for a recreational water contact facility containing more than one attraction shall be one hundred eighty dollars for the first attraction plus fifty-one dollars for each additional attraction up to a maximum fee of three hundred thirty-five dollars.

~~((6))~~ (5) The department may charge an additional fee of fifty-one dollars plus associated laboratory costs for



inspections beyond those provided under the annual operating permit when necessary due to violations of such items as:

- (a) Noncompliance with water quality standards; and
- (b) Failure to comply with operational requirements for health and safety.

**WSR 06-12-111**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Physical Therapy)  
 [Filed June 7, 2006, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-049.

Title of Rule and Other Identifying Information: WAC 246-915-360 Sharp debridement and 246-915-370 Electroneuromyographic examinations.

Hearing Location(s): Yakima Community Center, 10 North 8th Street, Yakima, WA 98901, on July 11, 2006, at 9:30 a.m.

Date of Intended Adoption: July 11, 2006.

Submit Written Comments to: Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by June 30, 2006.

Assistance for Persons with Disabilities: Contact Kris Waidely by June 30, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1137 passed in 2005 required the board to develop rules for education and training requirements for physical therapists (PTs) performing sharp debridement and electroneuromyographic (EMG) examinations. The proposed rules will assure licensed PTs demonstrate adequate training and education before performing these tasks. These rules would only apply to newly licensed PTs or PTs that have not signed a waiver and want to perform these tasks.

Reasons Supporting Proposal: The legislation requires rules to be created to establish adequate education and training for licensed physical therapists to perform sharp debridement. The legislation also requires rules to be created establishing licensed physical therapists to demonstrate further education and training in EMG examinations. The proposed rules are necessary to implement the legislation, and will help protect the public by assuring only trained and qualified PTs perform sharp debridement and EMG on patients.

Statutory Authority for Adoption: RCW 18.74.023, 18.74.010(11), and 18.74.160.

Statute Being Implemented: RCW 18.74.010(11) and 18.74.160.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., (360) 236-4847.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**1. Briefly describe the proposed rule:** HB 1137 (chapter 501, Laws of 2005) passed during the 2005 legislative session. The new legislation authorizes a physical therapist to perform sharp debridement, to include the use of a scalpel only upon showing evidence of adequate education and training. The new legislation also requires licensed physical therapists that perform EMG examinations for the purpose of testing neuromuscular function to demonstrate further education and training in EMG examinations as established by rule.

The proposed rules do the following:

1. They identify the requirements for adequate education and training for licensed physical therapists to perform sharp debridement;
2. They identify the requirements for licensed physical therapists to demonstrate further education and training in EMG examinations.

**2. Is a small business economic impact statement (SBEIS) required for this rule?** Yes.

**3. Which industries are affected by this rule?** In preparing this SBEIS, the department of health used the following SIC codes:

SIC	Description	MINOR IMPACT THRESHOLD
8051	Skilled nursing care facilities	\$ 195.64
8052	Intermediate care facilities	\$ 66.10
8059	Nursing and personal care, nec	\$ 66.10
8062	General medical and surgical hospital	\$ 396.57
8069	Specialty hospitals exc. Psychiatric	\$ 237.94
8082	Home health care services	\$ 122.94
8093	Specialty outpatient clinics, nec	\$ 116.33
8099	Health and allied services, nec	\$ 66.10

**4. What are the costs of complying with this rule for small businesses (those with fifty or fewer employees) and for the largest 10% of businesses affected?** If the licensed physical therapist is working for a small business, the physical therapist would need to go off site to get the required training to comply with this rule. If a licensed physical therapist is working for a large business, they would most likely have access to cases that would provide on-the-job training and would impose no additional costs.

These are the costs to comply with the rule:

If a licensed physical therapist working in private practice, without certification as a wound care specialist, wanted to perform sharp debridement and needed to obtain the twenty hours of mentored training the approximate cost to the licensed physical therapist would be \$600 @ \$30 an hour for twenty hours of mentored training.

If a licensed physical therapist wanted to become certified as a wound care specialist the initial certification cost to

the licensed physical therapist is \$330 (\$30 application fee and \$300 for initial certification which includes taking the national examination).

If a licensed physical therapist working in private practice, without board certification in clinical electrophysiology, wanted to perform EMG examinations and needed to obtain the minimum four hundred hours of training in EMG examinations the approximate cost to the licensed physical therapist would be \$60,000 @ \$150 an hour (for training provided by a physician) for four hundred hours of training or \$12,000 @ \$30 an hour (for training provided by a licensed physical therapist) for four hundred hours of training. This would be

Labor Market and Economic Analysis  
June 14, 2001

SIZE OF FIRM BY SIC INDUSTRY CODE  
FOR ALL OWNERSHIPS, INCLUDING MULTIPLE ESTABLISHMENTS

SIC	DESCRIPTION	Total	Total	Avg.	Avg.	Avg.
		Units	Employees	< 50	> = 50	Top 10%
TOTAL	INDUSTRY DESCRIPTION	213,459	2,650,166	5.0	190.3	94.1
8051	Skilled nursing care facilities	281	26,407	14.7	116.0	144.2
8052	Intermediate care facilities	29	1,651	22.3	99.8	146.6
8059	Nursing and personal care, nec	110	4,081	18.0	98.8	98.8
8062	General medical and surgical hospital	146	78,593	11.1	758.4	2,027.7
8069	Specialty hospitals exc. psychiatric	23	4,106	15.4	167.7	167.7
8082	Home health care services	169	7,408	14.2	109.3	162.6
8093	Specialty outpatient clinics, nec	245	7,530	9.3	113.5	113.5
8099	Health and allied services, nec	93	1,484	7.0	64.3	37.7

**6. If the rule imposes a disproportionate impact on small businesses, what efforts were taken to reduce that impact (or why is it not "legal and feasible" to do so) by:** Parts of the proposed rule impose a disproportionate impact to small businesses. In order to mitigate the impact of these costs, the department focused on reducing costs associated with the following parts of the rule.

If a licensed physical therapist working in private practice, without certification as a wound care specialist, wanted to perform sharp debridement and needed to obtain the twenty hours of mentored training the approximate cost to the licensed PT would be \$600 @ \$30 an hour for twenty hours of mentored training. The board received correspondence requesting an increase in the number of hours of mentored training to two hundred hours. At \$30 an hour for two hundred hours of mentored training the cost to the licensed PT would be \$6,000.

The board feels twenty hours of mentored training is sufficient to ensure patient safety because there have been no adverse actions taken against licensed PTs performing sharp debridement prior to this legislation. These twenty hours of mentored training is in addition to the wound care education that the PT received prior to becoming licensed. The twenty hours of mentored training would normally be completed by the licensed physical therapist on the job posing no additional costs to the licensed PT to comply with this rule. The board believes this rule satisfies the legislative mandate to assure professional competence.

a rare situation as Washington state currently has approximately five licensed physical therapists that perform EMG examinations out of 4,500 licensed PTs.

**5. Does the rule impose a disproportionate impact on small businesses?** Yes. If the licensed physical therapist is working for a small business, the physical therapist would need to go off site to get the required training to comply with this rule. If the licensed physical therapist works for large businesses the licensed physical therapist would be able to get this training on the job posing no costs to the licensed physical therapist to comply with this rule.

The proposed rule requires a minimum of four hundred hours of instruction in EMG examinations including at least two hundred needle EMG studies under direct supervision from a qualified provider. The board received correspondence requesting the board increase the minimum hours to 1,000. The cost would be \$150,000 @ \$150 an hour for 1,000 hours. Approximately five out of 4,500 licensed PTs currently perform EMG examinations in Washington. Licensed PTs have been safely performing EMG for approximately forty years prior to this legislation. The department of health has not received any complaints regarding patient safety involving EMG examinations. Therefore, the board feels the minimum proposal of four hundred hours of instruction in EMG examinations including at least two hundred needle EMG studies under direct supervision will ensure the public is protected against unqualified and untrained licensed PTs.

There is an exemption to the education and training requirements for individuals who are board certified in clinical electrophysiology from the American Board of Physical Therapy Specialties. They are considered to have met the education and training qualifications to perform EMG examinations defined in this rule.

Although the rule causes a disproportionate impact to small businesses, the benefit to the public outweighs the cost.

**7. How are small businesses involved in the development of this rule?** During the comment period, town meet-

ings were held and draft rules were sent to all interested parties.

A copy of the statement may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

June 2, 2006  
Kris Waidely  
Program Manager

#### NEW SECTION

**WAC 246-915-360 Sharp debridement education and training.** Licensed physical therapists may perform sharp debridement upon showing evidence of adequate education and training. Physical therapists may not delegate sharp debridement. The board will accept the following as adequate education and training:

(1) Twenty hours of mentored sharp debridement training - mentored training includes observation, cotreatment, and supervised treatment. Twenty hours mentored training in a clinical setting must include a case mix similar to the physical therapists' expected practice; or

(2) Certification as a wound care specialist by the American Academy of Wound Management; the National Alliance of Wound Care; or other organizations approved by the board, meets the requirements of this section; or

(3) An affidavit submitted prior to July 1, 2006, by a physical therapist licensed in Washington demonstrating education and training in sharp debridement, including the use of a scalpel.

#### NEW SECTION

**WAC 246-915-370 Electroneuromyographic examinations education and training.** A physical therapist may perform electroneuromyographic (EMG) examinations, which may include needle EMG and nerve conduction studies, to test neuromuscular function only if the physical therapist has received a referral from an authorized health care practitioner identified in RCW 18.74.010(7) and only upon demonstrating education and training in EMG examinations. The board will accept the following as evidence of education and training:

(1) A minimum of four hundred hours of instruction in electroneuromyographic examinations including at least two hundred needle EMG studies under direct supervision from a qualified provider. A qualified provider includes a physical therapist with board certification in clinical electrophysiology from the American Board of Physical Therapy Specialties, a neurologist, or a physiatrist; or

(2) A person who is board certified in clinical electrophysiology from the American Board of Physical Therapy Specialties meets the requirements of this section; or

(3) A written attestation submitted prior to July 1, 2007, by a physical therapist licensed in Washington demonstrating that the physical therapist has performed EMG examinations.

### **WSR 06-12-112 PROPOSED RULES DEPARTMENT OF HEALTH**

[Filed June 7, 2006, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-118.

Title of Rule and Other Identifying Information: Chapter 246-314 WAC, Facility construction review, this chapter sets out fees the department charges for reviewing health facility construction plans and providing technical assistance.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 326, Tumwater, WA 98501, on July 11, 2006, at 9:00 a.m.

Date of Intended Adoption: July 17, 2006.

Submit Written Comments to: Allen Spaulding, 310 Israel Road S.E., Tumwater, WA 98501, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Allen Spaulding by July 5, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to the current fee structure which, reduce fees and appropriately reflect refunds. Additionally, updates were necessary to clarify the facilities receiving construction review program services.

Reasons Supporting Proposal: The proposed amendments clearly define the construction review service program fees and refunds in rule.

Statutory Authority for Adoption: RCW 43.70.110.

Statute Being Implemented: RCW 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Chad Beebe, 310 Israel Road S.E., 236-2944; and Enforcement: Gary Bennett, 310 Israel Road S.E., 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is exempt from a small business economic impact statement (SBEIS). Under RCW 19.85.025(3), the requirements for an SBEIS does not apply to rules described under RCW 34.05.-310(4), this proposed rule adjusts fees pursuant to legislative standards, and corrects typographical errors, clarifying the rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) and (vi). The proposed rules only correct typographical errors, clarify the lan-

guage without changing its effect and set fees pursuant to legislative standards.

June 7, 2006  
B. White  
for Mary C. Selecky  
Secretary

### Chapter 246-314 WAC

#### ~~((FACILITY))~~ CONSTRUCTION REVIEW SERVICES

AMENDATORY SECTION (Amending Order 185, filed 8/7/91, effective 9/7/91)

**WAC 246-314-001 Purpose.** The purpose of this chapter is to establish fees ~~((for reviewing and approving))~~ to support the department's predesign, subsequent review, approval activities, and to enable the department to provide technical assistance for health and residential care facility construction projects.

AMENDATORY SECTION (Amending Order 185, filed 8/7/91, effective 9/7/91)

**WAC 246-314-010 Definitions.** For the purpose of this chapter the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) ~~((("Department")))~~ "Certified" means facilities that must be certified to participate in Medicare or Medicaid programs and meet physical environment minimum standards as required in the Code of Federal Regulations.

(2) "Change of approved use only" means a change in the function of a room that does not alter the physical elements.

(3) "Interior finishes" means products such as carpet, vinyl wall covering, wall paper, or paneling applied to an existing surface as the exposed surface.

(4) "Licensed" means facilities licensed from the state department of health (DOH) or state department of social and health services (DSHS) that must obtain approval from construction review services before licensure activity.

(5) "Permit" means a recommendation to the licensing or certifying authority from construction review services indicating that a facility meets the physical environment rules and the plan review process is complete.

(6) "Program" means the Washington state department of health, construction review services.

~~((2))~~ (7) "Project" means a ~~((construction endeavor))~~ change to a facility including new construction, replacement, alterations, additions, expansions, conversions, change of approved use, improvements, remodeling, renovating, and upgrading of the following types of facilities:

(a) ~~((("Adult residential rehabilitation center" as defined under chapters 71.12 RCW and 246-325 WAC;))~~ "Ambulatory surgery center" defined as a facility that is required to be certified for participation in Medicare or Medicaid;

(b) "Boarding homes" ~~((as defined))~~ licensed under chapters 18.20 RCW and 246-316 WAC;

(c) "Correctional facilities" as defined under RCW 43.70.130(8);

(d) "Hospice care center" licensed under chapters 70.127 RCW and 246-321 WAC;

(e) "Hospitals" licensed under chapters 70.41 RCW and 246-320 WAC;

~~((f))~~ "Maternity homes" and "childbirth centers" ~~((as defined))~~ licensed under chapters 18.46 RCW and 246-329 WAC;

~~((4))~~ (g) "Migrant worker housing" licensed under chapter 246-359 WAC. Plan review fees for migrant worker housing are set in chapter 246-359 WAC;

(h) "Nursing homes" ~~((as defined))~~ licensed under chapters 18.51 RCW and 248-14 WAC;

~~((e))~~ (i) "Private alcoholism hospitals" licensed under chapters 71.12 RCW and 246-324 WAC;

(j) "Private psychiatric hospitals" ~~((as defined))~~ licensed under chapters 71.12 RCW and 246-322 WAC; and

~~((f))~~ "Private alcoholism hospitals" as defined under chapters 71.12 RCW and 246-324 WAC;

(g) "Private alcoholism treatment facilities" as defined under chapters 71.12 RCW and 246-326 WAC;

(h) "Residential treatment facilities for psychiatrically impaired children and youth" as defined under chapters 71.12 RCW and 246-323 WAC;

~~((i))~~ "Hospitals" as defined under chapters 70.41 RCW and 246-318 WAC; and

~~((j))~~ "Hospice care center" as defined under chapters 70.126 RCW and 246-321 WAC.

(3) "Project sponsor" means the person, persons or organization, planning and contracting for the design and construction of facilities, generally the owner or the owner's representative.

(4) "Project cost" means all costs, except taxes, directly associated with the project, initially estimated and corrected by certification to the date of completion of the project and including:

(a) All architectural engineering designs, plans, drawings, and specifications;

(b) All fixed and installed equipment in the project; and

(c) Contractor supervision, inspection, and overhead.)

(k) "Residential treatment facilities" licensed under chapters 71.12 RCW and 246-337 WAC.

(8) "Project cost" means all costs directly associated with the project, initially estimated and corrected by certification to the date of completion of the project and including all fixed and installed clinical equipment in the project and contractor supervision, inspection, and overhead. This cost does not include:

(a) Taxes;

(b) Architectural or engineering fees; and

(c) Land acquisition fees.

(9) "Project sponsor" means the person, persons or organization, planning and contracting for the design and construction of facilities, generally the owner or the owner's representative.

(10) "Technical assistance" means assistance provided by the program to facilities either at the program offices or at the project location including:

(a) Information on the laws, rules and compliance methods and technologies applicable to the regulations;

(b) Information on methods to avoid compliance problems;

(c) Assistance in applying for permits, licensure or certification;

(d) Information on the mission, goals, and objectives of the program; and

(e) Assistance to parties constructing projects not required to be licensed or certified and voluntarily wish to comply with rules or guidelines in the interest of safety or best practices.

(11) "Value of existing construction" means the value of an existing building or portion thereof at the time of project submission, based on the current market value of the structure as documented by the project sponsor, or, as determined by assigning a cost per square foot value.

(d) The first submission for review and approval of the equipment supplier of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;

(e) Each eight staff hours or fraction thereof for technical assistance, four hundred ten dollars. For technical assistance requiring travel, the program may increase the fee to include travel.

(3) Building conversion fees will be based on the value of existing construction and derived from the fee schedule. The existing construction value is based on the local area cost data. Current cost data will be made available and posted on the construction review services web site. Project sponsors may submit specific cost data that accurately describes the estimate good faith value for the program's consideration.

NEW SECTION

**WAC 246-314-015 Application requirements.** The project sponsor shall submit to the program:

(1) An estimated permit value at the time of application. Permit valuations include the total value of work, including materials and labor, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If the program determines the valuation is underestimated, the program shall deny the application unless the applicant can show detailed estimates to meet the program's approval. Final building permit valuation is set by program;

(2) A completed project review application form with project documents for review;

(3) Documentation as required by the applicable licensing or certification rules; and

(4) The appropriate fee based upon the initial project construction cost as determined from the construction fee table in WAC 246-314-990.

AMENDATORY SECTION (Amending WSR 95-12-097, filed 6/7/95, effective 7/8/95)

**WAC 246-314-990 Construction review fees.** (1) ~~((The project sponsor shall submit to the department:~~

~~(a) A completed project review application form along with project documents for review; and~~

~~(b) The appropriate fee based upon the initial project construction cost as determined from the following construction fee table:))~~ Upon prior approval by the program the project sponsor may exclude from the "project cost" the cost for fixed or installed technologically advanced diagnostic or treatment equipment such as but not limited to: Lithotripters, CT scans, linear accelerators, and MRIs.

(2) The program shall charge a flat fee for the review of the following projects:

(a) Installation of carpet only, one hundred twenty dollars;

(b) Conversion or change of approved use only, one hundred twenty dollars;

(c) The first submission for review and approval of the site installation of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;

CONSTRUCTION FEE TABLE

Project Cost		Project Review Fee
\$ 0 to	\$ 999	\$ 120
1,000 to	1,999	250
2,000 to	2,999	325
3,000 to	4,999	410
5,000 to	9,999	530
10,000 to	19,999	665
20,000 to	29,999	820
30,000 to	39,999	975
40,000 to	49,999	1,125
50,000 to	64,999	1,325
65,000 to	79,999	1,535
80,000 to	99,999	1,845
100,000 to	124,999	2,200
125,000 to	149,999	2,550
150,000 to	199,999	2,970
200,000 to	249,999	3,325
250,000 to	324,999	3,650
325,000 to	449,999	4,100
450,000 to	574,999	4,600
575,000 to	699,999	5,200
700,000 to	849,999	5,825
850,000 to	999,999	6,550
1,000,000 to	1,249,999	7,150
1,250,000 to	2,499,999	7,850
2,500,000 to	2,999,999	8,550
3,000,000 to	3,499,999	9,300
3,500,000 to	4,999,999	10,750
5,000,000 to	6,999,999	12,200
7,000,000 to	9,999,999	13,800
10,000,000 to	14,999,999	15,850
15,000,000 to	19,999,999	17,850
20,000,000 to	29,999,999	19,900
30,000,000 to	39,999,999	23,000

## CONSTRUCTION FEE TABLE

Project Cost	Project Review Fee
40,000,000 to 59,999,999	25,600
60,000,000 and over	28,700

~~((2) The department shall charge a flat fee of eighty dollars for a project involving installation of carpet only.~~

~~(3) The project sponsor may request a reduction in the project review fee for fixed or installed technologically advanced diagnostic or treatment equipment projects including lithotripters, CT scans, linear accelerators, or MRI's.~~

~~(4) The department may adjust the project review fee if:~~

~~(a) The final project cost changes as evidenced on the certificate of project completion card; or~~

~~(b) The project sponsor requests a reduction in the fee according to subsection (3) of this section))~~ **(4) Fee reductions.** The program may decrease the project review fees, when:

(a) The final project cost as shown on the project completion card is less than the project cost shown on the application;

(b) The project sponsor requests a reduction in the fee according to subsection (1) of this section;

(c) The project is prepared by a state licensed architect or engineer when architectural or engineering services are not required by rule. In this case the project may qualify for a reduction of up to fifteen percent;

(d) A facility is converted from another occupancy as defined by the state building code; a facility is converted from one license to another; or, a facility that is currently unlicensed, but was previously licensed through the DOH or DSHS, wishes to be reviewed for licensure, then the construction review fee reduction of fifty percent from that shown on the construction review fee schedule shall be allowed. The amount of fee reduction will be determined by the estimated amount of systems review required to ensure that the rules have been met;

(e) Total fee reductions may not exceed seventy percent of the original estimated review fee.

**(5) Refunds.** The program shall refund fees paid when requested by the applicant as follows:

(a) If an application and fee has been received but no plan review or technical assistance has been performed by the program, three-fourths of the fees paid;

(b) If an application and fee has been received and plan review or technical assistance has been performed by the department, one-half of the fees paid;

(c) No fees paid by the applicant will be refunded if any of the following applies:

(i) More than two on-site visits, conferences, or plan reviews for any purpose have been performed by the program;

(ii) One year has elapsed since an application and fee is received by the program, but no permit is issued because applicant failed to complete requirements for permit; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is one hundred twenty dollars or less.

(iv) Approval or authorization to begin construction has been given and construction has commenced.

(v) A request has not been received to cancel the project.

**WSR 06-12-113**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed June 7, 2006, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-119.

Title of Rule and Other Identifying Information: Chapter 246-500 WAC, Handling of human remains; adopt new chapter 246-500 WAC, Handling of human remains; and repeal WAC 246-490-001, 246-490-040, 246-490-050, and 246-490-060, vital statistics, regarding human remains handling.

Hearing Location(s): Best Western Harbor Plaza, 33175 State Route 20, Oak Harbor, WA 98277, on July 12, 2006, at 1:30 p.m.

Date of Intended Adoption: July 12, 2006.

Submit Written Comments to: Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4088, by July 3, 2006.

Assistance for Persons with Disabilities: Contact Desiree Robinson by June 30, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would: (1) Revise rules of the state board of health for human remains handling to reflect changes in RCW 18.39.215; (2) move human remains provisions in chapter 246-490 WAC to a new chapter 246-500 WAC; (3) better reflect the religious diversity of the population of Washington and goals of the state constitution, Article 1, Section 11, Religious Freedom; (4) implement the waiver clause in RCW 18.39.215 to allow funeral directors and embalmers to remove unembalmed human remains from refrigeration for a maximum of twenty-four hours for specified activities, unless directed otherwise by a local health officer or medical examiner; (5) authorize local health officers to impose emergency provisions or suspend provisions; and (6) update for clarity.

Reasons Supporting Proposal: This rule revision is necessary: (1) To update rules of the state board of health to be consistent with changes to law made by SSB 5752 in 2005; (2) better respect religious beliefs for the handling of human remains according to constitutional provisions; (3) implement the waiver clause in RCW 18.39.215 to allow handling of unembalmed human remains out of refrigeration for activities necessary for final disposition and according to religious beliefs; and (4) give local health officers specific authority in emergency situations.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 18.39.215.

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: Under RCW 18.39.410, it is unprofessional con-

duct for a funeral director or embalmer to violate any regulation affecting the handling of human remains. The department of licensing regulates activities of funeral directors and embalmers and enforces RCW 18.39.410 for the board of funeral directors and embalmers. Under chapter 70.58 RCW, death certificates, burial-transit permits, and notices of removal are required. The department of health implements these provisions in association with local registrars.

Name of Proponent: State board of health and Yakama Nation, governmental.

Name of Agency Personnel Responsible for Drafting: Ned Therien, State Board of Health, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4103; Implementation and Enforcement: Philip Freeman, Department of Health, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are 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 Ned Therien, P.O. Box 47990, Olympia, WA 98504-7824, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

June 6, 2006  
Craig McLaughlin  
Executive Director

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-490-001	Legal authorities.
WAC 246-490-040	Handling and care of human remains.
WAC 246-490-050	Transportation of human remains.
WAC 246-490-060	Cremated remains.

#### **Chapter 246-500 WAC**

#### **HANDLING OF HUMAN REMAINS**

#### NEW SECTION

**WAC 246-500-010 Definitions.** (1) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.

(2) "Burial transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter 70.58 RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(3) "Coroner" means the county official as described under chapter 36.24 RCW and RCW 36.16.030.

(4) "Department" means the Washington state department of health.

(5) "Embalmer" means a person defined and licensed under chapter 18.39 RCW.

(6) "Funeral establishment" means a place of business defined and licensed under chapter 18.39 RCW.

(7) "Funeral director" means a person defined and licensed under chapter 18.39 RCW.

(8) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care, including persons credentialed in Washington state under Title 18 RCW and military personnel providing health care within Washington state regardless of licensure.

(9) "Human remains" or "remains" means the body of a deceased person, in any stage of decomposition, and includes cremated human remains.

(10) "Local health officer" means a licensed physician defined and appointed under RCW 70.05.050.

(11) "Local registrar of vital statistics" means the local health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district under chapter 70.58 RCW.

(12) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

(13) "Refrigerate" means:

(a) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F in a licensed funeral establishment; or

(b) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F or packing in dry ice outside of a funeral establishment.

#### NEW SECTION

**WAC 246-500-020 Contact with human remains.** (1) Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains must:

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including, when necessary:

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction;

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment after contact with human remains, blood, or body fluids;

(i) Provide appropriate means for disposing of body fluids, blood, tissues, and wastes or for retaining them for final disposition with the body.

(i) All autopsy rooms, morgues, preparation rooms, and other places where human remains are handled must be equipped with impervious containers with disposable, impervious liners and tightly fitting closures.

(ii) Body fluids, blood, tissues, and wastes removed from human remains must be kept with the body or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(iii) A sewage system approved by the local health officer or the department may be used for the disposal of blood and other body fluids.

(iv) All containers and liners used to receive solid or fluid materials removed from human remains must be cleaned and disinfected immediately after use, interred with the body, or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(2) Persons responsible for transfer or transport of human remains must clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.

#### NEW SECTION

**WAC 246-500-030 Refrigeration or embalming of human remains.** (1) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition must refrigerate or embalm the remains upon receipt.

(2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration upon receipt or remove human remains from refrigeration for the following activities:

(a) Embalming;

(b) Transporting;

(c) Cremating or burying;

(d) Viewing for identification for a period of time not to exceed one hour by a person able to identify the deceased;

(e) Washing, anointing, clothing, praying over, reading to, singing to, sitting with, guarding, viewing, or otherwise accompanying the deceased for a period of time not to exceed twenty-four hours by persons acting according to the directions of the deceased or the person having the right to control the disposition of the remains under RCW 68.50.160, provided that anyone directly touching the remains uses barrier precautions according to requirements under WAC 246-500-020 (1)(b); or

(f) As otherwise approved by the local health officer after evaluating specific circumstances, the need to protect public health, and recognition of religious beliefs.

(3) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition must prohibit activities otherwise allowed under subsection (2)(e) of this section if informed by a local health officer or

medical examiner that such activities would pose a direct threat to human health.

#### NEW SECTION

**WAC 246-500-040 Transportation of human remains.** (1) Persons who transport human remains must:

(a) Use effective hygienic measures consistent with handling potentially infectious material; and

(b) Obtain a burial-transit permit from the local health officer or local registrar of vital statistics or file a notice of removal according to requirements of RCW 70.58.230 prior to transporting human remains from one registration district to another.

(2) Prior to transporting human remains by common carrier, the persons responsible for preparing and handling the remains must:

(a) Enclose the human remains in a leak-resistant container placed inside another leak-resistant, securely constructed shipping container to prevent the release of all body fluids;

(b) Obtain and enclose the burial-transit permit in a sturdy envelope; and

(c) Attach the burial-transit permit to the shipping container.

(3) Persons responsible for human remains routed to the point of final destination on a burial-transit permit:

(a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and

(b) Must surrender the burial-transit permit to the sexton or crematory official at the point of interment or cremation.

(4) Sextons and cremation officials shall accept the burial-transit permit as authority for interment in a cemetery or for cremation within the state of Washington.

#### NEW SECTION

**WAC 246-500-050 Cremated human remains.** (1) Other than the provisions in this section, this chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state cemetery board, may issue a permit for disposition of cremated human remains. The permit for the disposition of cremated remains may be used in connection with the transportation of cremated remains by common carrier or other means.

(3) The local registrar or the department of health may issue a permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of cremated remains must be consistent with Washington state laws and rules.

#### NEW SECTION

**WAC 246-500-060 Authority of the local health officer.** To protect public health and respond to emergency situations, the local health officer may:



- (1) Impose additional requirements for the handling, care, transport, or disposition of human remains; or
- (2) Suspend any requirements of this chapter.

**WSR 06-12-114**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 7, 2006, 10:03 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-205-990 Decontamination of illegal drug manufacturing and storage sites—Fees.

Hearing Location(s): Washington State Department of Health, Town Center 2 Building, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on July 11, 2006, at 11:30 a.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Carolyn Comeau, Office of Environmental Health and Safety, P.O. Box 47825, Olympia, WA 98504-7825, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2261, by July 11, 2006.

Assistance for Persons with Disabilities: Contact Carolyn Comeau by July 3, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revises the fee structure for illegal drug manufacturing and storage sites (aka clandestine drug lab) contractor certifications, worker certificates, supervisor certifications, reciprocal certifications, refresher courses, and training provider certifications. The fees within the rule are paid by contractors, supervisors, workers and training course providers involved in the business of decontamination training or decontaminating illegal drug labs or illegal drug storage sites as part of the department's certification process for qualified cleanup and training specialists.

During the 2005 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor in ESSB 6090 (chapter 518, Laws of 2005).

Reasons Supporting Proposal: The proposed fees provide an increased proportion of the revenue necessary for the department of health (DOH) to conduct the certification program. This program is essential to public health protection by assuring that training course providers, contractors and their staff demonstrate essential skills and knowledge necessary for the cleanup of illegal drug labs or storage sites. Local health jurisdictions utilize the approved list of contractors for cleanup of sites in counties around the state.

Statutory Authority for Adoption: RCW 43.70.250 and 64.44.060.

Statute Being Implemented: Chapter 64.44 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Larry Kirchner, 20435 72nd Avenue South, Kent, WA 98032, (253) 395-6754; Implementation and Enforcement:

Carolyn Comeau, P.O. Box 47825, Olympia, WA 98504-7825, (360) 236-3381.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules that set or adjust fees pursuant to legislative standards. This rule proposes to revise fees necessary to defray the costs of administering the clandestine drug lab program. The department is directed under RCW 43.70.250 to set fees so that the cost of a business license program is fully borne by members of that business. During the 2005 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor under chapter 518, Laws of 2005.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi), "significant rule analysis" does not apply to rules that set or adjust fees pursuant to legislative standards, as this proposal does.

June 7, 2006

B. White

for Mary C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 03-13-123, filed 6/18/03, effective 7/19/03)

**WAC 246-205-990 Fees.** (1) The department (~~shall~~) charges the following fees for (~~issuance~~) issuing and (~~renewal of~~) renewing certificates. (~~The department shall set the fees by rule.~~)

(2) The fees (~~shall~~) must cover the cost of issuing certificates, filing papers and notices, and administering this chapter. The costs (~~shall~~) include reproduction, travel, per diem, and administrative and legal support costs.

(3) Fees are nonrefundable and (~~shall be in the form of~~) must be paid by check or money order made payable to the department.

(4) (~~The department shall require payment of~~) An applicant must pay the following fees (~~upon receipt of~~) when submitting application:

(a) (~~Twenty-eight~~) One hundred dollars (~~shall be assessed~~) for each initial, renewal, or reciprocal worker certificate application.

(b) (~~Twenty-eight~~) Two hundred dollars (~~shall be assessed~~) for each initial, renewal, or reciprocal supervisor certificate application.

(c) (~~Five hundred seventy~~) One thousand one hundred twenty-five dollars (~~shall be assessed~~) for each initial, renewal, or reciprocal authorized contractor certificate application. The applicant's certificate shall expire annually on the expiration date of the contractor's license issued under (~~the provisions of~~) chapter 18.27 RCW.

(d) (~~Two hundred seventeen~~) One thousand dollars (~~shall be assessed~~) for each initial and renewal application (~~and fifty-two dollars shall be assessed for each renewal application for illegal drug manufacturing or storage site decontamination training course approval~~) for training provider certification for the worker drug lab decontamination course.

(e) One thousand dollars for each initial and renewal application for training provider certification for the supervisor drug lab decontamination course.

(f) To be certified as a training provider for the refresher training course, applicants must be certified as a training provider for the worker and supervisor courses. There is no fee for application as a training provider for the refresher training course.

(5) For annual refresher training, a registrant must pay one hundred dollars if the course is sponsored by the department.

**WSR 06-12-115**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed June 7, 2006, 10:05 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-100-166 Immunization of child care and school children against certain vaccine-preventable diseases.

Hearing Location(s): Best Western Harbor Plaza, 33175 State Route 20, Oak Harbor, WA 98277-8713, on July 12, 2006, at 9:30 a.m.

Date of Intended Adoption: July 12, 2006.

Submit Written Comments to: Vicki M. Bouvier, Immunization Program CHILD Profile, Washington State Department of Health, P.O. Box 47843, Olympia, WA 98504-7843, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-3590, by July 12, 2006.

Assistance for Persons with Disabilities: Contact Vicki M. Bouvier by June 28, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update reference to the recommended childhood and adolescent immunization schedule from the 2005 version to the 2006 version effective July 1, 2007, and to remove the expired implementation effective date for varicella. This will make Washington state school and child care immunization age and interval requirements consistent with national standards. This will have the effect of changing the requirement from a Td (tetanus and diphtheria) booster to a Tdap (tetanus, diphtheria, and pertussis) booster at eleven - twelve years of age.

Reasons Supporting Proposal: This proposal is necessary for schools and child care centers to follow best practices for childhood immunization in Washington state and to ensure Washington state immunization requirements reflect national immunization recommendations.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 28A.210.140.

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 anticipated effective date for this proposed rule is July 1, 2007, to allow schools and child care centers

time to complete necessary infrastructure changes prior to implementation.

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Vicki M. Bouvier, Tumwater, Washington, (360) 236-3483; Implementation and Enforcement: Janna Bardi, Tumwater, Washington, (360) 236-3568.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule is exempt from the requirement to conduct a small business economic impact statement (SBEIS) because it meets the exemption described in RCW 19.85.025(3), "This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4)." RCW 34.05.310(4) allows exemptions from preparing an SBEIS because the proposed rule incorporates a national standard by reference without material change; and clarifies language of a rule without changing its effect. The proposed rule is exempt from an SBEIS under RCW 19.85.-030 because it does not impose costs on a business or industry.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule is exempt from the requirement to conduct a cost-benefit analysis because it meets two of the criteria listed in RCW 34.05.310(4) that allow exemptions from this requirement: Incorporating national standards by reference without material change; and clarifying language of a rule without changing its effect.

June 5, 2006

Craig McLaughlin  
Executive Director

AMENDATORY SECTION (Amending WSR 05-16-051, filed 7/28/05, effective 8/28/05)

**WAC 246-100-166 Immunization of child care and school children against certain vaccine-preventable diseases.** (1) Purpose. Under the authority of RCW 43.20.050 and 28A.210.140, the state board of health is empowered to adopt rules to establish immunization requirements upon entry into school and child care. The following rule improves the public health of Washington by preventing vaccine-preventable disease outbreaks.

(2) Definitions. The words and phrases in this section have the following meanings:

(a) Certificate of immunization status (CIS) means:

(i) A certificate of immunization status form approved by the department; or

(ii) A CHILD profile immunization record; or

(iii) Any other immunization form approved by the department.

(b) "Chief administrator" means:

(i) The person with the authority and responsibility for supervising the immediate operation of a school or child care; or

(ii) A person designated in writing by the statutory or corporate board of directors of the school district or school; or

(iii) In the absence of the above, a person or persons with the authority and responsibility for supervising the general operation of the school district.

(c) "Child" means any person regardless of age admitted to:

(i) Any public school district; or

(ii) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060; or

(iii) Any child care center.

(d) "Child care center" means any licensed facility or center that regularly provides care of children for periods of less than twenty-four hours per day subject to licensure by the department of social and health services as described in chapter 74.15 RCW.

(e) "Conditional status" is a type of immunization status where a child is not fully immunized under (g) of this subsection and is in the process of completing the required immunizations for his/her age.

(f) "Exemption" is a type of immunization status where a child is not fully immunized under (g) of this subsection and meets school and child care documentation requirements under subsection (4)(b)(i) of this section.

(g) "Full immunization" or "fully immunized" is an immunization status where a child has been vaccinated at ages and intervals consistent with the national immunization guidelines, with immunizing agents against:

(A) Diphtheria;

(B) Tetanus;

(C) Pertussis (whooping cough);

(D) Poliomyelitis;

(E) Measles (rubeola);

(F) Mumps;

(G) Rubella;

(H) Hepatitis B;

(I) Haemophilus influenzae type B disease; and

(J) Varicella for children under thirteen years of age (~~admitted to school or child care after July 1, 2006~~).

(h) "Immunizing agent" means any vaccine or other immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against vaccine-preventable diseases.

(i) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county or combined county health district.

(j) Until July 1, 2007, "national immunization guidelines" means the schedule for the immunization described in the "Recommended Childhood and Adolescent Immunization Schedule: United States—2005" approved by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

(k) Effective July 1, 2007, "national immunization guidelines" means the schedule for the immunization described in the "Recommended Childhood and Adolescent Immunization Schedule: United States—2006" approved by the Advisory Committee on Immunization Practices (ACIP),

the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

(l) "Parent" means, for the purposes of signature requirements in this rule:

(i) The mother, father, legal guardian, or any adult in loco parentis of a child seventeen years of age or younger; or

(ii) A person eighteen years of age or older; or

(iii) An emancipated minor.

((H)) (m) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.

(3) Documentation of immunization status required by schools and child care center.

(a) Schools and child care centers shall require documented proof of immunization status in the form of a CIS.

(b) The CIS form must include:

(i) Name of child or student;

(ii) Birth date;

(iii) Type of vaccine(s) administered;

(iv) Month, day, and year of each dose of vaccine received;

(v) Documentation of immunization status to indicate:

(A) Full immunization under subsection (2)(g) of this section; or

(B) Conditional status under subsection (2)(e) of this section; or

(C) Exemption under subsection (2)(f) of this section;

(vi) Notice to parents that if an outbreak of vaccine-preventable disease for which the child is exempted occurs, the child may be excluded from school or child care for the duration of the outbreak;

(vii) Parent signature.

(c) As proof of a child's immunization status against varicella, schools and child care centers may accept one of the following:

(i) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(ii) Documentation by the parent that a child has a history of varicella; or

(iii) Serologic proof of immunity against varicella.

(4) Duty of schools and child care centers.

(a) Schools and child care centers shall require a CIS form, signed by parents, for new enrollees registering for admission into kindergarten through grade twelve or child care as a requirement of admission.

(b) Full immunization is required upon admission unless:

(i) Parent(s) sign and submit a CIS form indicating a medical exemption.

(A) A permanent medical exemption is allowed when a signature of a licensed medical doctor (M.D.), a doctor of osteopathy (D.O.), doctor of naturopathy (N.D.), physician assistant (P.A.), or nurse practitioner (A.R.N.P.), acting within the scope of practice, certifies medical reasons to defer or forego one or more immunizations required for full immunization under subsection (2)(g) of this section.

(B) If immunizations are deferred on a temporary basis, the student must receive the required immunizations upon expiration of the exemption.

(ii) Parent(s) sign and submit a CIS form indicating a religious or philosophical, or personal exemption.

(iii) Parent(s) sign and submit a CIS form indicating conditional status if there is evidence of satisfactory progress toward full immunization, including:

(A) Documentation of start or continuance towards full immunization status;

(B) Documentation that immunizations received are consistent with the National Immunization Guidelines defined in subsection (2)(j) of this section; and

(C) Documentation of when the next immunization is due.

(c) Schools and child care centers maintenance of child immunization records:

(i) Schools and child care centers shall keep a department approved CIS for each enrolled child.

(ii) Schools and child care centers shall keep a list of children with medical, religious, philosophical, or personal exemptions.

(iii) The chief administrator shall retain records for at least three years on a child who is excluded from school under this section. The record must include the child's name, address, and date of exclusion.

(d) Schools and child care centers shall transmit the list of children with medical, religious, philosophical, or personal exemptions to the local health department upon request.

(e) A school or child care center shall return the department approved CIS or a legible copy to the parent if the child is withdrawn from school or child care or transferred from the school.

(f) A school or child care center may not withhold a child's department approved CIS for any reasons, including nonpayment of school child care fees.

(g) A school or child care center shall provide access to immunization records to agents of the state or local health department of each child enrolled.

(h) The chief administrator of a school or child care center shall submit a school immunization status report under chapter 28A.210 RCW either electronically on the internet or on the school immunization status report provided by the department. The report must be:

(i) Submitted to the department by November 1 of each year;

(ii) If a school opens after October 1, the report is due thirty days from the first day of school.

(5) Persons or organizations administering immunizations, either public or private shall:

(a) Furnish each person immunized, or his or her parent, with a written record of immunization containing information required by the state board of health; and

(b) Provide immunizations and records in accordance with chapter 246-100 WAC.

(6) A school or child care center shall exclude a child if one or more of the following applies:

(a) Parent(s) fail to provide a completed CIS form on or before the child's first day of attendance. Schools must use procedures consistent with Title 180 WAC.

(b) A child admitted under conditional status has not received the required immunization(s) within one month from the date due for completion of the next dose.

(c) A child has been admitted under a medical exemption and the particular vaccine for which the exemption was granted is no longer contraindicated and the child has not received the immunization within one month from the due date for completion of the next dose.

(7) A local health officer may exclude a child from school or child care under chapter 246-110 WAC during an outbreak of a vaccine-preventable disease if the child has not been fully immunized against that disease due to:

(a) Medical exemption;

(b) Conditional status;

(c) Religious exemption;

(d) Philosophical exemption; or

(e) Personal exemption.

(8) Implementation.

(a) The department shall develop and distribute implementation guidelines for schools and child care centers that:

(i) Interpret immunization requirements by grade level consistent with the ages specified in the national immunization guidelines and this section; and

(ii) Reflect national immunization guidelines for children who did not receive required immunizations prior to entry into kindergarten or first grade, and for whom a full series of immunizations is not recommended.

(b) The department may develop school implementation guidelines that waive or modify immunization requirements when a phasing-in period is warranted for a new immunization mandate, when there is limited availability of a required immunizing agent, or when new information about the safety or efficacy of an immunizing agent prompts a reevaluation of an existing vaccination requirement. Any waiver or modification must:

(i) Reflect the best available medical research as indicated by the ACIP or the state health officer recommendation;

(ii) Identify a specific vaccine-preventable disease or immunizing agent;

(iii) Identify a specific cohort of children by age or grade level;

(iv) Be limited in duration; and

(v) Be approved by the board.

## WSR 06-12-119

### PROPOSED RULES

### DEPARTMENT OF ECOLOGY

[Order 06-02—Filed June 7, 2006, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-134.

Title of Rule and Other Identifying Information: The department of ecology is proposing to:

1. Create new chapter 173-180 WAC, Facility oil handling standards, to consolidate four existing chapters (chapters 173-180A, 173-180B, 173-180C, and 173-180D WAC). In addition to this consolidation, ecology is also proposing new requirements for oil transfer operations.

2. Amend chapter 317-40 WAC, Bunkering operations, to update existing requirements and incorporate new oil

transfer requirements for vessels transferring oil. The new title for this chapter will be vessel oil transfer standards.

Hearing Location(s): Columbia Basin College, Gjerde Center, 2600 North 20th Avenue, Pasco, WA 99301, (509) 547-0511 ext. 2240, on July 11, 2006, at 1:00 p.m.; at the Washington State University-Vancouver Campus, Student Services Building, Room 129-130, 14204 N.E. Salmon Creek Avenue, Vancouver, WA 98686, (360) 546-9588, on July 13, 2006, at 1:00 p.m.; at the City Council Chambers, Main Chamber Room, 321 East 5th Street, Port Angeles, WA 98362, (360) 457-0411, on July 15, 2006, at 1:00 p.m.; at the Hampton Inn, Fox Hall, 3985 Bennett Drive, Bellingham, WA 98225, (360) 676-7700, on July 18, 2006, at 1:00 p.m.; and at the Highline Community College, Building 7, 2400 South 240th, Des Moines, WA 98198, (206) 878-3710, on July 19, 2006, at 1:00 p.m.

Date of Intended Adoption: September 25, 2006.

Submit Written Comments to: Jason Reichert, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [oiltransferrule@ecy.wa.gov](mailto:oiltransferrule@ecy.wa.gov), phone (360) 407-7390, fax (360) 407-7288, received by 5 p.m. on July 26, 2006.

Assistance for Persons with Disabilities: Contact Susanne McLemore by July 5, 2006, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement the oil transfer requirements of RCW 88.46.160 and the related changes reflected in chapter 316, Laws of 2006 by:

- Creating new chapter 173-180 WAC, Facility oil handling standards, that sets new requirements for Class 1, 2, 3, and 4 facilities. The four existing chapters will be repealed at a later date.
- Amending chapter 317-40 WAC to add new requirements for nonrecreational vessels delivering and receiving oil.

The two rules will set new oil spill prevention, response, and recovery standards for oil transfer operations that occur "over the water" to or from vessels operating in state waters.

The proposed rules would require advance notice of oil transfers, increased communications, personnel training, and other oil spill prevention measures. In addition, certain persons delivering oil would be required to deploy spill containment equipment prior to the transfer of oil, as well as employ alternative measures if prebooming is not safe and effective.

The new rules affect certain businesses that transfer oil in bulk to or from nonrecreational vessels. These businesses may include mobile facilities (tank truck or rail cars), marinas, small waterfront facilities, oil tank vessels, and any other entity delivering oil over waters of the state.

Reasons Supporting Proposal: The legislature adopted a zero spill goal and established oil transfer requirements in RCW 88.46.160 and chapter 316, Laws of 2006. This rule making implements this legislative direction to prevent, contain, and recover spills from oil transfer operations.

Statutory Authority for Adoption: RCW 88.46.160 and chapter 90.56 RCW and chapter 316, Laws of 2006.

Statute Being Implemented: RCW 88.46.160 and chapter 90.56 RCW and chapter 316, Laws of 2006 (which adds new sections to chapter 88.46 RCW).

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

Name of Proponent: Department of ecology, spill prevention, preparedness and response program, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Reichert, Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, (360) 407-7390; Implementation and Enforcement: Dale Jensen, Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, (360) 407-7450.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

Prepared for state of Washington department of ecology, spill prevention, preparedness, and response program by northwest economic associates.

**Executive Summary:** The spill prevention, preparedness and response program of the Washington state department of ecology is proposing revisions to the rules governing oil transfer operations that occur over state waters. The proposed rule changes will create standards for safe oil transfer operations as a strategy to meet a zero spill goal established by the Washington state legislature. The rules proposed in chapters 173-180 and 317-40 WAC introduce new oil transfer standards that focus on (1) preventing spills first and foremost, (2) the spread of product in the event of a spill, and (3) standardizing the response capability of the delivering facility or vessel in the event of a spill.

Since the proposed rules will impose more than minor costs on businesses, a small business economic impact statement (SBEIS) is required by law (RCW 19.85.030). This study has been developed to analyze the compliance costs of the proposed rule to small and large businesses, in order to determine whether small businesses will bear a disproportionate share of these costs.

The analysis in this SBEIS compares the cost of compliance per employee between large and small businesses that are involved in over-the-water oil transfers. Based on the number of employees, five oil refineries classified as Class 1 facilities provide a cost basis for the analysis. The number of employees in each of these operations is over 300. Establishments within Class 2, Class 3, and Class 4 facilities make up the small business category, with an average employment of about eight employees.

The average annual statewide compliance costs for the five largest companies is close to \$6 million, with a cost per employee of \$3,520. The compliance cost per employee for small businesses is \$1,188, or about 34% of the per employee cost of refineries. Therefore, since the potential compliance cost per employee in the small facilities is 66% less than those in the five large refineries, the impact of the proposed rule is not likely to impose a disproportionate burden on small businesses compared to large companies.

#### Section I Introduction

**Background:** The spill prevention, preparedness and response program of the Washington state department of ecology (DOE) is proposing revisions to the rules governing oil transfer operations that occur over state waters. The proposed rule changes will create standards for safe oil transfer

operations as a strategy to meet a zero spill goal established by the Washington state legislature. Since the proposed rules will impose more than minor costs on businesses, an SBEIS is required by law (RCW 19.85.030). This study has been developed to analyze the compliance costs of the proposed rule to small and large businesses, in order to determine whether small businesses will bear a disproportionate share of these costs.

**Objective of the SBEIS:** The objective of the SBEIS, as established in RCW 19.85.040, is to identify and evaluate the various requirements and costs that the rule might impose on businesses. In particular, the purpose is to determine whether a disproportionate impact of the compliance costs is borne by the state's small businesses. The legislative purpose of the Regulatory Fairness Act (chapter 19.85 RCW) is set out in RCW 19.85.011:

*"The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business."*

The specific purpose of the SBEIS is identified in RCW 19.85.040:

*"A small business economic impact statement must include [1] a brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule, and [2] the kinds of professional services that a small business is likely to need in order to comply with such requirements. [3] It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. [4] It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. [5] To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:*

- (a) Cost per employee;*
- (b) Cost per hour of labor; or*
- (c) Cost per one hundred dollars of sales.*

*(2) A small business economic impact statement must also include:*

*(a) [6] A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3);*

*(b) [7] A description of how the agency will involve small businesses in the development of the rule; and*

*(c) [8] A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply."*

For purposes of the SBEIS, the terms "business," "small business," and "industry" are defined by RCW 19.85.020:

*(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.*

*(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.*

*(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce.*

**Summary of Proposed Rule Changes:** The proposed rule changes will affect both facilities and vessels that transfer oil over navigable waters of Washington state. Costs of compliance will vary for each of five different affected business types: Facilities, marine fueling terminals, mobile facilities, marine fuel outlets, and vessels. Most of these sectors are currently complying with federal regulations enforced by the United States Coast Guard, and with existing state regulations. The federal regulations (46 U.S. Code) were strengthened by the Oil Pollution Act of 1990 requiring greater numbers of personnel for oil transfers, and 33 Code of Federal Regulations (C.F.R.) requiring more and stronger steps be taken to prevent oil spills by commercial handlers and shippers of oil products. Parts 154, 155, and 156 of 33 C.F.R. apply to vessels and facilities that conduct bulk oil or hazardous material transfers. These rules provide flexibility for the Coast Guard captain of the port to impose additional requirements depending on port-specific needs. These regulations define the standards for safe oil transfer that include topics such as transfer procedures, emergency shutdown, transfer restrictions, communication, watch-standers, recordkeeping, personnel qualifications, advance notice of transfers, and transfer containment and response standards.

In general, all oil transfers that will occur at greater than five hundred gallons per minute (gpm) are termed Rate A transfers, while lower speed transfers are termed Rate B. For all Rate A transfers, prebooming will newly be required as long as it is both safe and effective to do so. This will include a majority of the transfers at Class 1 facilities and most vessel to vessel transfers. If it is not safe and effective to do so, different vessel and facility classes will need to be ready to deploy boom in the event of a spill, and are required to have additional boom available and on the scene within one hour. In all cases, personnel conducting transfers will need to have appropriate training in oil transfer safety, hold pretransfer conferences, and ensure that loading procedures and adequate communication between vessel and facility is established prior to and during a transfer. Furthermore, Rate A deliverers must develop and submit for approval to ecology the threshold environmental determining factors at each location. This threshold analysis will be used to determine whether or not it is safe and effective to preboom.

Rate B transferors will need to either comply with the prebooming as described in the new regulation, or with the alternative measures outlined therein. In general, the alternative measures involve having boom available to be deployed, and all equipment needed to deploy and clean up a spill if one occurs.

All affected parties will also have the option to develop their own alternatives to compliance with regard to the alternative measures used when prebooming is not safe and effective. A plan for alternative compliance may be submitted to

DOE for approval if it is either impractical or economically infeasible to comply with the regulations as is.

**Industries Required to Comply:** The only industries to which these rules will apply are those involved in over-the-water oil transfers. The rule proposed for facilities in chapter 173-180 WAC categorizes facilities engaged in over-the-water transfers into four classes. Table 1 identifies these classes and provides brief descriptions of the kinds of industries that comprise each class. A brief description of firms affected by the proposed vessel rule (chapter 317-40 WAC) is also shown in the table.

**Table 1**  
**Industries Affected by Proposed Regulations**

Category	Category Name	Description	Number of Firms	Number of Employees per Firm
Class 1	Refineries	Firms that operate oil refineries within the state	5	> 300
Class 1	Nonrefinery Facilities	Large industrial plants such as pulp and paper mills, fuel distributors, and some marine fueling terminals that receive fuels via pipelines	12	7-600
Class 2	Mobile Facilities	Mostly mobile tank trucks	35	12
Class 3	Marine Fueling Terminals	Facilities that provide fueling services to fishing vessels and other smaller commercial vessels	3	21
Class 4	Transfer Sites	Small marinas and dock	125	7
Vessels	Vessels	Typically barges that transport oil products to and from terminals and refineries	5	38-120

**Methods of Analysis:** This analysis compares the cost of compliance per employee between large and small businesses involved in over-the-water transfers, in order to determine whether small businesses will bear a disproportionate share of these costs. Based on the number of employees, the five refineries in Class 1 are considered the largest businesses in this analysis. Small businesses, including those from all facility classes, are aggregated and the total per employee cost is compared with that for the largest businesses to assess whether or not a disproportionate impact is expected for small businesses. The majority of Class 1 "nonrefineries" are neither independently owned, nor are they small in terms of the number of employees. This category presents a mixed bag of companies since some are very large paper mills and some are small facilities. Thus, this class is excluded from the analysis in order to avoid discrepancies in the results.

**Contents of the Document:** The proposed oil transfer rules developed through this rule-making process are evaluated further in the following sections as required in chapter 19.85 RCW. **Section II** discusses the compliance costs for businesses in Washington. The section provides [1] a brief description of the reporting, record keeping, and other compliance requirements, [2] the kinds of professional services that a small business is likely to need in order to comply, [3] the costs of compliance for businesses required to comply with the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs, and [4] whether compliance with the rules will cause businesses to lose sales or revenue. **Section III** evaluates [5] whether the proposed rules will have a disproportionate impact on small

businesses. **Section IV** considers [6] actions taken to reduce the impact of the rules on small businesses, [7] how small businesses were involved in the development of these rules, and provides [8] a list of industries required to comply with the rules.

### Section II Compliance Costs for Washington Businesses

The majority of costs associated with the proposed regulations will be borne by the largest firms, those that operate oil refineries within the state (Class 1 "Refineries"). In most cases (but not all), the initial costs are associated with establishing a full-circle permanent boom at the dock that can be operated on a regular basis. Costs include such associated items as boats to maintain the boom, dock lighting, and other equipment. The boom operation will also incur additional costs to these companies due to the labor required to conduct prebooming. In subsequent years, this extra labor plus equipment maintenance comprise the majority of additional costs.

Nonrefinery facilities within Class 1 include large industrial plants such as fuel distributors, and some marine fueling terminals that receive fuels via pipelines. These facilities are expected to respond to the regulations in one of three ways depending on a variety of factors. The first way to respond is to reduce the pumping rate below five hundred gallons per minute which would avoid the requirement to preboom. This action would require the facility to provide response containment and recovery equipment and the personnel in-house at the facility in case of a spill. The next way is to provide prebooming equipment and personnel in-house at the facility. The last expected way to respond is to contract an oil spill

response organization (OSRO). If an OSRO is used, it is assumed that a typical transfer would cost approximately \$2,500 on average for the services of the OSRO to preboom.

Mobile tank trucks (Class 2 facilities) are expected to pool resources and share the costs of equipment purchases, so that boom will be available at docks where mobile trucks fuel ships. Some firms are expected to comply via in-house provision of a "runner" truck that will carry boom to the transfer dock, and have the driver of the runner truck be trained to meet the new requirements. The latter is a more expensive option.

Facilities that meet Class 3 standards are expected to experience additional costs associated with either prebooming or having boom readily available. These facilities provide fueling services to fishing vessels and other smaller commercial vessels. There are four firms identified so far in this category in the state of Washington. Class 4 facilities are the many marinas that typically fuel recreational vessels and some smaller commercial and public boats.

The primary compliance costs of the vessel regulation are associated with prebooming during vessel to vessel bunkering and lightering operations. Compliance costs to tugs and barges that transport oil products to and from terminals and refineries are primarily covered in part through the costs estimated for facilities, as most transfers in this industry are between a facility and a tank barge or tank ship. It is assumed that a firm that conducts a large number of bunkering operations at sea will provide compliance in-house at a significant cost. However, most firms that bunker or lighter infrequently are expected to comply with the new regulations via the assistance of an OSRO.

In accordance with chapter 19.85 RCW, a discussion of required cost categories is provided below:

**Reporting and Recordkeeping:** The additional record-keeping/reporting rules are not expected to incur additional costs to facility or vessel businesses.

**Additional Professional Services:** Some businesses that will be required to preboom all transfers will contract firms that specialize in oil spill recovery and response (OSRO) for compliance. OSROs perform all necessary measures for a business to be in compliance during a transfer.

**Compliance Costs:** All facility and vessel businesses are expected to incur new costs in equipment compliance. Some facilities, except Class 4 facilities, may require additional employees to operate in compliance. Additional labor represents the greatest cost for all facility and vessel businesses. No additional administrative costs are anticipated for any facility or vessel business.

**Loss of Revenues:** It is possible that several types of businesses could lose sales as result of the regulation. For example, within the Class 2 and Class 3 sectors, fueling may become more desirable in other locations such as Oregon or Canada. Also, these facilities service the resident fishing boat fleet in Puget Sound. Typically, these fishing vessels are all small family businesses and are already vulnerable to a great deal of economic variability due to the uncertainty in fish populations and weather.

The vessel to vessel bunkering industry may also lose revenue if container ships and others elect to refuel in other states or countries rather than pay the additional costs. In the Columbia River, it is quite possible that Oregon water bunkers will be preferred to Washington waters not only due to additional costs, but additional time associated with prebooming. In Puget Sound, many of the large ships have fuel capacities such that they may opt to refuel in Asia as opposed to paying additional costs.

Average costs for each sector described are presented in Table 2 below.

**Table 2**  
**Summary of Expected Costs to**  
**State of Washington from Proposed Oil Transfer Regulations**

<b>Affected Group</b>	<b>Number in State</b>	<b>Average Annual Cost per Firm</b> (over 20 years in 2006 dollars)	<b>Average Annual Statewide Costs</b> (over 20 years in 2006 dollars)
Class 1 Facilities <i>Refineries</i>	5	\$1,196,892	<b>\$5,984,461</b>
Class 1 Facilities <i>Other Large Facilities</i>	12	\$79,187	<b>\$950,240</b>
Class 2 Facilities <i>(Mobile Tank Trucks)</i>	35	\$29,423	<b>\$1,029,821</b>
Class 3 Facilities <i>(Marine Fueling Terminals)</i>	3	\$72,204	<b>\$216,612</b>
Class 4 Facilities <i>(Marine Fueling Outlets)</i>	50-200	\$2,079	<b>\$259,830</b>
Vessels	5*	\$297,291	<b>\$1,486,454</b>

\*Other companies operating vessels may be affected by the new regulations, but compliance costs are anticipated to occur at the facilities where these vessels conduct transfers. Therefore, just five companies are included in this analysis.

**Section III Analysis of Proportionate Impact on Small Businesses**

An analysis of proportionate impact is based on the costs of compliance relative to the number of employees at the facility. The largest businesses affected by the oil transfer



rules are the five Class 1 oil refineries. These refineries each employ an average of three-hundred employees. The same companies representing the refineries also own some of the other Class 1 nonrefinery facilities, and the rest of the firms in this sector are also expected to be large firms. Four of the five vessel companies are also expected to be large firms, employing more than fifty people each.

Firms within Class 2, Class 3, and Class 4 make up the small business category. The mean number of employees among all small operations is eight. Within the Class 2 facilities, one quarter, or nine of the thirty-five firms are assumed

to be integrated with large companies, and so just twenty-six firms are included in the analysis. Among the vessel companies, one is a small business and included.

Table 3 presents the average cost per employee for the large refineries and other small businesses involved in over the water oil transfers. The average annual statewide compliance costs for the five largest companies is close to \$6 million, with a cost per employee of \$3,520. The compliance cost per employee for small businesses is \$1,188, about 34% of the per employee cost for refineries.

**Table 3  
Costs per Employee  
in Large and Small Businesses**

Sector Classes	Number of Firms	Employees per Firm	Total Employment	Sector Compliance Cost	Cost per Employee	Percent of Large Costs per Employee
Large	5	300	1,750	\$5,984,461	\$3,520	100
Small	155	8	1,295	\$1,241,452	\$1,188	34

Based on this analysis the potential compliance costs per employee in small firms are almost 66% less than that of the largest firms. Thus, the impact of the proposed rules is not likely to be disproportionately larger for small businesses than for large when measured on a cost per employee basis.

**Section IV Small Business Involvement and Impact Reduction Efforts**

**Actions Taken to Reduce the Impact of the Rule on Small Businesses:** By separating facilities into four classes with different regulations, the structure of the proposed rules reduces impacts on small businesses. The rules use a scaled, risk-based prevention and response approach that sets standards on those facilities and vessels with a higher risk of transfer spills. Additionally, the rules incorporate flexibility to reduce the cost of compliance for smaller businesses; some requirements are only applicable if the facility is doing a larger volume Rate A transfer, and do not apply during Rate B transfers. During Rate B transfers, smaller facilities do not have to preboom, and have lower equipment and response capability requirements. Additional flexibility is incorporated into the proposed regulations as facilities have the option to submit an alternative plan to DOE, enabling them to achieve the objectives of the rules through other means.

**Involvement of Small Business in the Development of the Proposed Rules:** During the development of the transfer rules, DOE communicated regularly with affected small businesses. Electronic correspondence with interested parties was established early in the rule development process in order to maintain communication. DOE remained in regular contact with Class 3 facilities owners, and met individually with several of these businesses. Through the process, Class 4 facilities were informed about the proposed regulations and were given the opportunity to comment on these. Additionally, representatives of small businesses as well as business owners themselves were members of the oil transfer rule advisory committee that provided input into the development of the rules.

A copy of the statement may be obtained by contacting Washington State Department of Ecology, Attn: Jason Reichert, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7390, fax (360) 407-7288, e-mail oiltransfer-rule@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Washington State Department of Ecology, Attn: Jason Reichert, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7390, fax (360) 407-7288, e-mail oiltransferrule@ecy.wa.gov.

June 6, 2006  
Polly Zehm  
Deputy Director

**Chapter 317-40 WAC**

**VESSEL OIL TRANSFER STANDARDS**

**PART A: GENERAL REQUIREMENTS**

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-010 ((Purpose)) Applicability of this chapter.** ((This chapter establishes minimum standards for safe bunkering operations to reduce the likelihood of an oil spill by:

(1) ~~Emphasizing the importance of proper procedures, communication and monitoring before, during and after a bunkering operation;~~

(2) ~~Ensuring that the duties of each person involved in a bunkering operation are clearly defined; and~~

(3) ~~Requiring vessel owners and operators to adopt company policies that improve the safety of bunkering.))~~ (1)

Except as provided in subsection (2) of this section, this chapter applies to the following bulk oil transfers occurring on or over waters of the state. Any bulk oil transfer to or from a:

- (a) Tank vessel;
- (b) Cargo vessel;
- (c) Passenger vessel;
- (d) Facility; or
- (e) A lightering operation (WAC 317-40-110 only).

(2) This chapter does not apply to:

(a) An oil spill recovery vessel that is engaged in spill response activities;

(b) A vessel's internal oil transfers.

#### NEW SECTION

**WAC 317-40-015 Purpose.** (1) This chapter establishes minimum standards for safe oil transfer operations to meet a zero spill goal established by the legislature. This chapter emphasizes:

(a) Using a scaled approach that sets standards for safe oil transfer operations to protect people and the environment;

(b) The importance of proper procedures, communication, and monitoring before, during and after oil transfer operations;

(c) That the duties of each person involved in an oil transfer operation are clearly defined; and

(d) It is the vessel owners and operators obligation to adopt company policies that improve the safety of oil transfer operations.

(2) The purpose of this chapter is to implement chapter 88.46 RCW Vessel oil spill prevention and response to regulate the transfer of oil on or over waters of the state.

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-020 ((Application-)) Authority.** ~~((This chapter applies to all bunkering operations to refuel a self-propelled covered vessel 300 gross tons or more, and to all owners, operators, persons in charge, and other personnel involved in bunkering in state waters.))~~ (1) The legislature granted ecology the authority to adopt these rules under RCW 88.46.160 which provides statutory authority for regulating the transfer of oil on or over waters of the state.

(2) The owner or operator of a vessel must allow ecology on board the vessel for the purposes of ensuring compliance with the oil transfer operation requirements of this chapter.

#### NEW SECTION

**WAC 317-40-025 Definitions.** Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Bunkering" means a bulk oil transfer operation to replenish a self-propelled covered vessel with fuel or lubricating oil.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three

hundred gross tons or more, including, but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Director" means the director of the department of ecology.

(7) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(8) "Ecology" means the department of ecology.

(9) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that both:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a tank covered vessel, in a single transaction.

(10) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(11) "Innage" means the difference from the surface of the liquid to the tank bottom.

(12) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(13) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(14) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302 adopted August 14, 1989, under section 101(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(15) "Oil transfer" means a transfer of oil in bulk on or over waters of the state.

(16) "Oil transfer procedure" means the document required under 33 CFR 155.720 that contains information required under 33 CFR 155.750 including bunkering procedures.

(17) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(c) In the case of an abandoned vessel, onshore, or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

"Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, ship, or any other entity whatsoever.

(20) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(21) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for Class 1, 2, or 3 facilities, or the person with overall responsibility for oil transfer operations if not otherwise designated.

(22) "Proficient in English" means the ability to clearly speak the English language so personnel from other vessels and facilities understand and may safely complete an oil transfer operation.

(23) "Recreational vessel" means a vessel operated for pleasure, which when leased, rented, or chartered to another is used for pleasure.

(24) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(25) "Spill" means an unauthorized discharge of oil into the waters of the state.

(26) "State" means the state of Washington.

(27) "Tank barge" means a tank vessel without a means of self-propulsion, and a self-propelled tank vessel less than forty meters (one hundred and thirty feet) in overall length.

(28) "Tank ship" means a self-propelled tank vessel forty or more meters in overall length.

(29) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(30) "Training" means instructional materials and procedures, including, but not limited to, materials, practical exercises, and drills.

(31) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(32) "Ullage" means the depth of space above the free surface of the fluid to the reference datum of that tank.

(33) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-030 ((Definitions-)) Compliance with federal rule or law.** ((Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Bunkering" means ~~an oil transfer operation to replenish a self-propelled covered vessel 300 gross tons or more with fuel or bunkers used to propel the vessel.~~

(2) "Cargo vessel" means ~~a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred gross tons or more, including but not limited to, commercial fish processing vessels and freighters.~~

(3) "Covered vessel" means ~~a tank vessel, cargo vessel, or passenger vessel.~~

(4) "Innage" means ~~the difference from the surface of the liquid to a fixed datum plate or to the tank bottom.~~

(5) "Office" means ~~the office of marine safety.~~

(6) "Oil transfer procedure" means ~~the document required under 33 C.F.R. Sec. 155.720 that contains information required under 33 C.F.R. Sec. 155.750 including bunkering procedures.~~

(7) "Passenger vessel" means ~~a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.~~

(8) "Person in charge" means, ~~for vessels, the person designated under 33 C.F.R. Sec. 155.700 who meets the qualifications under 33 C.F.R. Sec. 155.710. For facilities, it is the person designated under 33 C.F.R. Sec. 154.700 who meets the qualifications of 33 C.F.R. Sec. 154.710.~~

(9) "Proficient in English" means ~~the ability to clearly speak the English language so personnel from other vessels and facilities understand and may safely complete a vessel operation.~~

(10) "Tank vessel" means ~~a ship 300 gross tons or more that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:~~

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of the state.

~~A ship is constructed or adapted to carry oil in bulk as cargo or cargo residue if authorized to do so under the ship's certification. A vessel carries oil as cargo or cargo residue if the oil is carried for dispensing to other vessels or equipment off the vessel, or for delivery from point to point, regardless of whether direct compensation for carriage is involved. A vessel being used to collect spilled oil from the water, and may have some recovered oil storage capacity, does not carry oil as cargo.~~

(11) "Training" means ~~instructional, materials, and procedures, including shipboard materials, practical exercises, and drills.~~

(12) "Topping off" means ~~the receipt of bunker oil into the last ten percent of available tank capacity in any bunker tank.~~

(13) "Ullage" or "outage" means ~~the depth of space above the free surface of the fluid to the tank top.)~~ (1) Any person with oil transfer duties must comply with applicable provisions of federal law and regulations governing licensing, documentation, equipment, operations, and oil transfers.

(2) The following Code of Federal Regulations (CFR) in effect on the effective date of this rule are incorporated by reference:

(a) 33 CFR 155.310, 155.700, 155.780, 155.720, and 155.750.

(b) 33 CFR 156.120 and 156.150.

(c) 46 CFR Part 16.

(3) All federal regulations incorporated in this chapter are available through the National Archive and Records Administration web site located here: <http://www.gpoaccess.gov/cfr/index.html>.

#### NEW SECTION

**WAC 317-40-035 Inspections.** (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW 88.46.160.

(2) To demonstrate compliance with this chapter, ecology may ask for the following documents, as they relate to oil transfers, to be made available for review:

(a) Official, deck, cargo operations, and engineering logs;

(b) Written company policies, procedures, and checklists;

(c) Standing orders;

(d) Preloading plans or cargo transfer plans;

(e) Declaration of inspections (DOI);

(f) Oil transfer procedures;

(g) Training materials related to oil transfer operations; and

(h) Any wind speed and direction information and swell height information if it is recorded independently of the deck log book.

(3) Ecology may require the vessel to demonstrate the ability to meet transfer containment and recovery standards in WAC 317-40-110.

(4) Ecology may provide a preliminary inspection report to the owner or operator at the conclusion of the inspection.

**AMENDATORY SECTION** (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-040 ((Compliance with federal law and regulations.)) Recordkeeping.** ((1) All bunkering and personnel involved in bunkering must comply with applicable provisions of federal law and regulations governing licensing, documentation, and oil transfer operations under 33 C.F.R. Sec. 155 and 156, and 46 C.F.R. Sec. 12, 15, and 35.

(2) Federal law and regulations applicable to bunkering on the effective date of these rules are hereby incorporated. Any amendment or recodification of an applicable federal law or regulation is also hereby incorporated unless expressly stated otherwise.)) (1) Records required by this rule must be maintained and made available to ecology for a minimum of three years, except for the following: Preload plans or cargo transfer plans and declaration of inspection (DOI) kept on the vessel for at least thirty days from date of the oil transfer operation.

(2) A vessel's owner or operator must maintain, and, if requested by ecology provide records such as log book

entries, maintenance records or other records required in this chapter.

(3) All records required in this chapter must be available to ecology for photocopying upon request.

#### NEW SECTION

**WAC 317-40-045 Threat of an oil spill.** (1) Ecology may determine that immediate action is necessary to suspend or delay oil transfer operations if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.

(2) Ecology may:

(a) Issue an administrative order that may require immediate suspension of oil transfer operations;

(b) Specify each condition requiring immediate action to eliminate the condition; and

(c) Notify the PICs that oil transfers may resume once ecology is satisfied the threat has been addressed.

**AMENDATORY SECTION** (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-050 ((Receiving vessel procedures.)) Oil spills.** ((Receiving vessel personnel on a covered vessel being refueled in state waters shall comply with the requirements of this section.

(1) Training. Except for a receiving vessel subject to subsection (2) of this section, a receiving vessel's person in charge shall conduct a training session for all personnel with duties under the vessel's oil transfer procedure within 48 hours before a vessel's scheduled bunkering. If personnel not assigned bunkering duties in the oil transfer procedure are assigned such duties, the person in charge shall train such personnel before they assume bunkering responsibilities. Training shall be conducted in a language common to both the person in charge and personnel being trained. The training shall include, but is not limited to, a review of the:

(a) Vessel's preloading plan as described in subsection (3) of this section;

(b) Civil and criminal penalties and liabilities for not complying with federal and state regulations, and for spilling oil in Washington waters;

(c) Vessel's oil transfer procedure, including each person's responsibilities and station;

(d) English phrases and hand signals to communicate the instructions listed in subsection (8)(b) of this section; and

(e) Emergency shutdown procedures described under WAC 317-40-065.

(2) Intrastate operation. A receiving vessel underway in state waters more than 50 percent of the time in a calendar year and that bunkers three or more times in a month shall conduct the training session described in subsection (1) of this section at least once every month.

(a) The receiving vessel's owner or operator shall submit a written schedule of the vessel's operations to the office stating:

(i) The vessel's name, call sign, and official number;

(ii) The typical routes served by the vessel; and

(iii) The typical number of bunkering operations performed in any 30 days.

(b) The receiving vessel's owner or operator shall notify the office in writing within 30 days of making a change in the vessel's typical operations

(3) ~~Preloading plan.~~ The receiving vessel's person in charge shall prepare a preloading plan prior to conducting the training session required under subsection (1) of this section. The person in charge shall ensure that a copy of the plan is posted at a place where the plan is easily seen by, and in a language common to, vessel personnel engaged in bunkering. The preloading plan must include the:

(a) Identification, location and capacity of the vessel's bunker tanks receiving oil;

(b) Level and type of liquid in each bunker tank prior to the scheduled time for bunkering;

(c) Final ullage or innage, and percent of each bunker tank to be filled;

(d) Sequence in which the bunker tanks are to be filled; and

(e) Procedures to regularly monitor all bunker tank levels and valve alignments.

(4) ~~Watchstanders.~~ The vessel's oil transfer procedure must designate a point of transfer watch and a deck rover watch. Each watch must be equipped with two-way communications to communicate with the person in charge and vessel master or officer in charge.

(a) A point of transfer watch must remain at the point of connection with the delivering vessel during bunkering.

(b) The primary duty of the deck rover is to monitor for oil spills on deck or over the side during bunkering. The deck rover may perform other duties not in conflict with his or her primary duty. The deck rover shall:

(i) Visually inspect the deck and water near or opposite all bunker tanks and each tank's sounding tube and vent, if accessible; and

(ii) Remain in a position during changing over of tanks or topping off to view any spillage on deck or in the water.

(5) ~~Personnel duties.~~ Except for the deck rover watch, personnel assigned bunkering responsibilities may perform only those duties assigned while the vessel is bunkering. All personnel assigned to bunkering shall comply with their assigned duties under the vessel's oil transfer procedure and remain at their work stations during topping off.

(6) ~~Vessel access.~~ A receiving vessel must have an accommodation ladder in place to use for access between the receiving and delivering vessels, or between the receiving vessel and facility. If the vessel's master determines that the ladder is inaccessible from the delivering vessel another means of access must be provided that meets the standards established in the International Convention for the Safety of Life at Sea, 1974, as consolidated in 1986 (SOLAS). If the vessel master determines access is not safe due to weather or seastate, the master may allow communication by radio or by means set forth in subsection 8 of this section.

(7) ~~Soundings.~~ The receiving vessel's person in charge shall ensure that he or she receives sounding reports on tank levels according to the monitoring procedure established in the vessel's preloading plan.

(8) ~~Communication.~~

(a) The receiving vessel's person in charge shall ensure that communication between the receiving and delivering

vessel or facility is accomplished either visually and by voice, sound-powered phones, radio, or air horn as required under 33 C.F.R. Sec. 155.785. The receiving vessel's person in charge shall notify the delivering vessel's or facility's person in charge immediately before topping off begins.

(b) The person in charge shall ensure that bunkering personnel know and use English phrases and hand signals to communicate the following instructions during bunkering: "stop," "hold," "okay," "wait," "fast," "slow," and "finish.")

(1) Personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:

(a) Observed in the water or on the shoreline adjoining the transfer area;

(b) Discharged into oil spill containment or on the deck;  
or

(c) Spilled into the water or onto the shoreline adjoining the transfer area.

(2) The deliverer must immediately stop the oil transfer at the request of any person on the receiving vessel.

(3) The PICs must make notifications as required in RCW 90.56.280.

(4) Before the oil transfer operation may resume:

(a) The source of the spill is controlled, contained, and a proper response is underway;

(b) The PICs must agree there is no significant threat to waters of the state or public health; and

(c) The PICs must receive approval from the state on-scene coordinator in coordination with the federal on-scene coordinator.

#### NEW SECTION

**WAC 317-40-055 Noncompliance.** Any violation of this chapter may be subject to enforcement and penalty sanctions of chapter 88.46 RCW.

**AMENDATORY SECTION** (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-060 ((~~Bunkering by a facility.~~) Alternative compliance.** ((During the pretransfer conference, the person in charge for a receiving vessel being refueled by a facility shall ensure that the receiving vessel's personnel comply with these rules and with the facility's operations manual as required under chapter 173-180B WAC.)) (1) Any owner or operator may submit a proposal for alternative compliance for requirements in WAC 317-40-110 Transfer containment and recovery standards.

(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC 317-40-110(6).

(b) Rate B deliverers may only submit an alternative compliance proposal for alternative measures in WAC 317-40-110(8).

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking alternative compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the alternative proposal;

(d) A detailed description of the alternative proposal that includes, when appropriate, the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;

(e) A detailed analysis of how the proposal offers equivalent or greater protection, prevention, and response measures as compared to the requirement in this chapter that includes:

(i) Methodology of the analysis;

(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information;

(iii) Technical feasibility of proposal versus current requirements; and

(iv) Cost analysis of proposal versus current requirements.

(3) The owner or operator must submit the alternative compliance proposal to ecology at least one hundred twenty days before planned operation under this section.

(4) Ecology will make the proposal available for a thirty-day public review and comment period.

(5) Ecology may request additional information regarding any aspect of the proposal such as site specific meteorological, water current velocity, and other monitoring data to support the proposal.

(6) Ecology will respond to the owner or operator within ninety days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal.

(7) The approval will be valid for no more than two years from the date on the letter.

(8) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company at the approved site.

(9) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal would provide an equivalent or greater level of environmental protection in terms of spill prevention, preparedness, and response when compared with conventional compliance equipment, personnel, operating procedures, and maintenance systems.

(10) The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Alternative Compliance Review  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Alternative Compliance Review  
300 Desmond Drive  
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-065 ((Emergency shut down procedures-)) Owner and operator responsibilities. ((1) If any of the receiving vessel's personnel discovers an oil spill either on deck outside fixed containment, or on the water, or believes an oil spill is likely, he or she shall request immediate shutdown of the bunkering operation.**

**(2) The delivering vessel's personnel shall immediately activate the emergency shutdown device at the request of any person on the receiving vessel-)) Owners and operators of vessels conducting oil transfer operations must ensure that the requirements in this chapter are implemented and followed.**

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-070 ((Pretransfer conference-)) Severability. ((1) Before any oil is transferred during bunkering, the receiving vessel's person in charge and the delivering vessel's or facility's person in charge shall hold a pretransfer conference as required under 33 C.F.R. Sec. 156.120. The persons in charge shall meet in person onboard either vessel or at the facility unless the receiving vessel's master determines it is unsafe under WAC 317-40-050(6). The persons in charge shall:**

**(a) State and discuss the contents of the declaration of inspection required under 33 C.F.R. Sec. 156.150;**

**(b) Discuss procedures for informing the delivering vessel's or facility's person in charge before the receiving vessel changes over tanks or begins topping off; and**

**(c) Discuss emergency shutdown procedures and identify each vessel's means to shut down the transfer in an emergency.**

**(2) The receiving vessel's person in charge shall identify for the delivering vessel's or facility's person in charge those personnel designated as point of transfer watch and deck-roller watch.**

**(3) A receiving vessel may not receive bunkers unless a person proficient in English and a language common to the vessel's officers and crew is present at the pretransfer conference. The receiving vessel's owner or operator shall provide an interpreter proficient in English and a language common to the vessel's officers and crew at the request of the office, the delivering vessel's or facility's person in charge, or the U.S. Coast Guard.**

**(4) If the delivering vessel's person in charge is not satisfied with the receiving vessel's representative's English proficiency, he or she shall request an interpreter-)) If any provision of this chapter is held invalid, the remainder of the chapter is not affected.**

**PART B: OIL TRANSFER REQUIREMENTS FOR VESSELS**

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-100** (~~Owner and operator responsibilities~~.) **Advance notice of transfer.** ~~((1) Owners and operators of receiving and delivering vessels must ensure that the procedures required under this chapter are implemented and followed on their vessels.~~

~~(2) Owners and operators shall ensure that records are kept as required by this chapter and federal regulations.)~~ (1) The delivering vessel involved in an oil transfer must notify ecology at least twenty-four hours prior to an oil transfer operation; except: If the delivering vessel cannot meet the notification requirements of this subsection, notice must be provided as soon as possible.

(2) The notice of transfer must be submitted to ecology on the *Advanced Notice of Transfer* form provided by ecology or a facsimile, and must contain the following information in the order provided:

(a) Company name, address, contact person and telephone number of organization delivering the oil;

(b) Date of transfer operation, estimated starting time, and duration of the oil transfer operation;

(c) Name of delivering vessel and receiving vessel or facility involved in the oil transfer, including LR/IMO or official number if available;

(d) City name and either the address or location/anchorage where the oil transfer operation will occur;

(e) Oil product type and quantity in gallons; and

(f) Whether or not prebooming will take place? (yes or no).

(3) Notification may be made by the delivering vessel's agent or other contracted representative.

(4) The notification form may be submitted via internet web site established by ecology, e-mail, or facsimile. The notification form and contact information is found on ecology's web site here:

<http://www.ecy.wa.gov/programs/spills/spills.html>.

(5) Compliance schedule: All delivering vessels must begin submitting advance notice within thirty calendar days of the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-110** (~~Location of bunkering (reserved)~~.) **Transfer containment and recovery standards.** This section applies to all oil transfers involving all jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. This section does not apply to vessels or facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(1) All persons delivering oil to nonrecreational vessels over waters of the state must comply with the following requirements:

(a) There are two rates for oil transfer containment and recovery standards. The deliverer must determine which rate is appropriate for each oil transfer operation they conduct.

(i) Rate A: Oil transfer operations at a rate over five hundred gallons per minute; and

(ii) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less.

(b) Rate A oil transfers must preboom when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measures in subsection (6) of this section. Prebooming requirements are found in subsection (5) of this section.

(c) Rate B oil transfer operations must choose one of the following:

(i) Preboom when safe and effective (subsection (7) of this section); or

(ii) Alternative measures (subsection (8) of this section).

(d) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design based on the manufacturer's specifications for the environmental conditions of the transfer area.

(e) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(f) If multiple oil transfers are occurring with a single vessel and one product transferred is not appropriate to preboom, then the entire transfer must meet the alternative measures.

(2) Determination of safe and effective:

(a) If an owner or operator conducting Rate A transfers believes a transfer will not be safe and effective to preboom an oil transfer operation, the owner or operator must: Determine the threshold values when a delivering vessel will not preboom under WAC 317-40-110(5) and submit this information in a report to ecology. The information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations. These values and the supporting data must address, at a minimum, the following site specific information during typical oil transfer operations:

(i) Personnel safety;

(ii) Sea state values including typical wave periods;

(iii) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;

(iv) Wind speed in knots and prevailing directions;

(v) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.

(b) The owner or operator must submit the threshold values determination report to ecology for review and approval. Existing delivering vessels must submit the report within one hundred eighty calendar days from the effective date of this chapter. Delivering vessels that begin operating in Washington water after the effective date of this chapter must submit the report at least one hundred twenty days prior to the first oil transfer operation. The report must include, at a minimum, and in the order presented:

(i) Cover sheet with name of company submitting the report and point of contact information;

(ii) Table of contents including supporting documents and appendices;

(iii) A detailed description of the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;

(iv) A detailed analysis of the proposed threshold values for the transfer site including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected;

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(c) When reviewing threshold determination reports, ecology must consider the following:

(i) Personnel safety;

(ii) Operating environment of the transfer site(s) such as site specific meteorological, water current velocity and other monitoring data to support the threshold values determination;

(iii) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;

(iv) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.

(d) Ecology will make the report available for a thirty-day public review and comment period.

(e) Ecology will respond to the owner or operator within ninety days of receipt of the threshold values determination report with a letter approving, conditionally approving, or disapproving the report.

(f) One paper and one electronic copy of the threshold values determination report and appendices must be delivered to:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Threshold Values Determination Report  
P.O. Box 47600  
Olympia, WA 98504-7600

(3) Rate A deliverers are required to report to ecology when the deliverer determines it is not safe and effective to preboom. The *Ecology Boom Reporting Form* publication may be submitted by e-mail or facsimile. The report must be submitted prior to the oil transfer or when conditions develop which require removal of the boom.

(4) Compliance schedule:

(a) Any vessel conducting Rate A transfers must meet all the requirements of this section except subsection (2) of this section within ninety calendar days from the effective date of this rule.

(b) Any vessel conducting Rate B transfers must meet all the requirements of this section within ninety days from the effective date of this rule.

(5) Rate A prebooming requirements.

(a) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom four times the length of the largest vessel at the transfer location.

(ii) Deploy boom, identified in (a)(i) of this subsection, sufficient to completely surround the vessel(s) and facil-

ity/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil.

(ii) Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(iv) Check the boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(v) Have personnel trained in the proper use and maintenance of boom and recovery equipment.

(vi) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of the remaining boom (identified in (a)(i) of this subsection) for containment, protection or recovery.

(6) Rate A alternative measures:

(a) Rate A deliverers may only use these alternative measures when it is not safe and effective to meet the prebooming requirements in subsection (5) of this section.

(b) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom four times the length of the largest vessel at the transfer location.

(ii) Give their primary response contractor advance notice of the transfer including the location, duration and product type.

(iii) Have the ability to safely track the spill in the dark if the oil transfer operation occurs during low light conditions. The tracking system must be on scene within thirty minutes of being made aware of a spill.

(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment.

(v) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) Within one hour of being made aware of a spill the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil is most effectively contained in the event of a spill.

(d) Within two hours of being made aware of a spill, the deliverer must have all of the following:

(i) Additional boom four times the length of the largest vessel at the transfer location available for containment, protection, or recovery; and



(ii) A skimming system must be available on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

(7) Rate B prebooming requirements:

(a) A deliverer transferring at Rate B may choose to meet the prebooming requirements in this subsection or the alternative measure requirements in subsection (8) of this section.

(b) Prior to starting the oil transfer operation the deliverer must:

(i) Deploy boom that completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil:

(ii) Have a stand-off of at least five feet from the sides of a vessel;

(iii) Check boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;

(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment; and

(v) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional five hundred feet of boom. This boom may be used for containment, recovery, or protection.

(8) Rate B alternative measures:

(a) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of oil from the transfer containment;

(ii) Have personnel trained in the proper use and maintenance of boom and recovery equipment; and

(iii) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of an additional five hundred feet of boom for containment, protection or recovery.

(c) Within two hours of being made aware of a spill, the deliverer must have an additional five hundred feet of boom available for containment, protection, or recovery.

## NEW SECTION

**WAC 317-40-125 Providing safe vessel access.** (1) A receiving vessel must have an accommodation ladder in place to use for access between the receiving and delivering vessel, or between the receiving vessel and facility.

(2) If the delivering vessel determines that the ladder is inaccessible or unsafe, another means of access must be provided that meets the standards established in the International Convention for the Safety of Life at Sea, 1974, as consolidated in 1986 (SOLAS).

(3) If the vessel master or PIC determines access is not safe due to winds, sea state, currents or other environmental conditions, the master or PIC may allow communication by radio or other means described in WAC 317-40-140.

(4) The entire ladder and the portion of the ship's deck where access is provided must be illuminated during low light situations and without glare to the persons using the ladder.

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-130 ((Oil spills)) Pretransfer conference.** ~~((1) In the event oil is spilled into the water, or discharged onto either the receiving or delivering vessel's deck outside fixed containment, the vessel's persons in charge shall immediately shut down the bunkering operation.~~

~~(2) Bunkering may not resume until:~~

~~(a) Notification is made as required in RCW 90.56.280; and~~

~~(b) The persons in charge determine that there is no threat of subsequent oil spills.)) (1) Before the start of an oil transfer operation, the PICs must hold a face to face pretransfer conference unless the receiving vessel's master/officer-in-charge determines it is unsafe under WAC 317-40-120. If it is determined unsafe to board the vessel, the conference may take place via phone or VHF radio.~~

~~(2) The PICs must discuss and agree upon:~~

~~(a) The preloading or cargo plan;~~

~~(b) The contents of the declaration of inspection (DOI) required under 33 CFR 156.150;~~

~~(c) Procedures for communicating soundings, changing over tanks, and beginning topping off;~~

~~(d) Shift change procedures;~~

~~(e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and~~

~~(f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.~~

~~(3) The receiving vessel PIC, if taking bunkers, must identify the point-of-transfer watch and deck-rover watch to the delivering PIC.~~

~~(4) An oil transfer will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.~~

~~(a) If the vessel or facility PIC is not satisfied with the vessel representative's English proficiency, he or she must request an interpreter.~~

(b) If requested by ecology, the U.S. Coast Guard, the delivering vessel, or the facility, the owner or operator of the receiving vessel must provide an interpreter proficient in English and a language common to the officers and crew.

(5) The master/officer-in-charge or his designee must record in the vessel's deck log immediately upon completion, the date and time of the pretransfer conference.

If the receiving vessel is not in service and does not have a deck watchstander on duty, the PIC may alternatively enter the required information in the engine room log.

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-140 ((Compliance.)) Communications.**

((1) Upon request by the office, an owner or operator of a receiving or delivering vessel involved in bunkering in state waters shall demonstrate compliance with this chapter. The owner or operator shall make available to the office any or all of the following: (a) The receiving vessel's official and engineering logs; (b) written company policies; (c) standing orders; (d) the receiving vessel's preloading plan; (e) each vessel's declaration of inspection form; (f) the vessel's oil transfer procedures; and (g) training materials.)) (1) The delivering vessel's PIC must ensure continuous two-way voice communications is usable and available in all weather conditions as well as all phases of the transfer operation between the PICs.

(2) The delivering PIC must ensure at least the following are available for use during the oil transfer operation:

(a) Two portable communication devices that are intrinsically safe; and

(b) An air horn for emergency signals.

(3) The PICs must ensure personnel involved in the oil transfer know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

AMENDATORY SECTION (Amending WSR 94-16-076, filed 7/29/94, effective 10/29/94)

**WAC 317-40-150 ((Enforcement.)) Oil transfer procedures.** ((1) Failure to comply with the requirements of chapter 88.46 RCW, the provisions of this chapter, or any order or administrative action issued by the office under this chapter, the office may:

(1) Order an immediate shutdown of the bunkering procedure;

(2) Require additional personnel;

(3) Refer the violations for criminal prosecution pursuant to RCW 88.46.080; or

(4) Take other appropriate actions to address the violation.)) (1) All oil transfer operations must be supervised by a PIC designated in writing by the owner or operator.

(2) A receiving vessel's oil transfer procedures (OTPs) must have, in addition to the information required under 33 CFR 155.720, the following:

(a) Each person assigned oil transfer duties must be equipped with two-way communications to communicate with the PIC's and the covered vessel's master or officer-in-charge.

(b) If the deck-rover or point-of-transfer watch identifies a spill or a threat of a spill, he/she must report it to the PIC immediately.

(c) Except for the deck-rover watch, personnel assigned oil transfer responsibilities must perform only those duties assigned while the oil transfer is underway, and that all personnel assigned to oil transfer duties remain at their workstations during topping off.

(3) The receiving vessel PIC must notify the delivering PIC immediately before topping off begins and confirm the transfer rate.

(4) When a PIC is relieved, he or she must:

(a) Discuss the preloading or cargo transfer plan and the transfer status with the relieving PIC;

(b) Notify the PIC at the other side of the transfer that relief is taking place; and

(c) Ensure the relieving PIC reads and signs the DOI.

(5) All vessels participating in oil transfer operations must have procedures for oil transfer operations during inclement weather or sea conditions.

(a) Vessels transferring at a facility must follow the facility's weather threshold values.

(b) These procedures must be located where personnel involved in the oil transfer operation can access it.

(c) These procedures must include, at a minimum:

(i) Requirements for monitoring weather and sea conditions and forecasts;

(ii) Requirements for communicating weather and sea forecasts or conditions to the PICs at regular intervals, if PICs cannot monitor these themselves;

(iii) Threshold values for weather and sea conditions above which oil transfer operations must cease;

(iv) Requirements for monitoring the vessel's mooring, transfer hoses, or piping for unusual or unexpected strain caused by weather and sea conditions;

(v) Requirements for staffing the tank ship's engineering space such that the tank ship's engines are on standby and ready for immediate maneuvering in cases where the conditions described in (c)(iii) of this subsection are experienced; and

(vi) Requirements for the delivering vessel to cease oil transfer operations or attempt to secure the services of an appropriately sized tug when the threshold values in (c)(iii) of this subsection are experienced.

NEW SECTION

**WAC 317-40-160 Soundings.** (1) The receiving PIC must sound all tanks involved in the oil transfer operation before the transfer begins and record these values in the pre-load plan.

(2) The receiving PIC must frequently sound the tanks during loading to verify transfer rates, tank levels, and to ensure tank volumes do not change once tanks are no longer actively filled.

(3) During start-up, steady state pumping, and topping off, both PICs must estimate and verify the transfer rate at least hourly to determine the transfer rate conforms to the agreed upon rate in the pre-load or cargo plan.

(4) The receiving PIC must notify the deliverer if the transfer rate is unacceptable and the deliverer must adjust as necessary.

(5) When a shift change occurs for any PIC, the relieving PIC must verify the current transfer rate and the status of all tanks involved in the transfer operation.

### PART C: BUNKERING

#### NEW SECTION

**WAC 317-40-200 Delivering vessel procedures.** Delivering vessel personnel must not begin bunkering unless:

(1) The tankerman meets the certification requirements under 46 CFR Part 13 and has undergone annual training to become familiar with the requirements of this chapter;

(2) The vessel(s) and facilities involved in the oil transfer meet the appropriate requirements in this chapter;

(3) A declaration of inspection (DOI) was discussed during the pretransfer conference and signed by both PICs as required under 33 CFR 156.120; and

(4) The receiving vessel's PIC has discussed procedures for informing the delivering vessel's PIC before changing over tanks and beginning topping off.

#### NEW SECTION

**WAC 317-40-210 Receiving vessel pretransfer training.** Receiving vessel personnel on a covered vessel being refueled in state waters must comply with the requirements of this section.

(1) Except for a receiving vessel subject to WAC 317-40-230 Intrastate operation, a receiving vessel's PIC must conduct a training session for all personnel with duties under the vessel's oil transfer procedures within forty-eight hours before a vessel's scheduled oil transfer operation.

(2) If the oil transfer operation is postponed and the training is no longer within forty-eight hours, the pretransfer training must be conducted again, so that it is within forty-eight hours before the oil transfer can begin.

(3) The PIC must conduct training in a language common to both the PIC and personnel being trained.

(4) The training must include, but is not limited to, a review of the:

(a) Vessel's preloading or cargo transfer plan as described in this chapter, as applicable;

(b) Chief mate/first officer's cargo orders, as applicable;

(c) Civil and criminal penalties and liabilities for not complying with federal and state regulations, and for spilling oil in Washington waters;

(d) Vessel's oil transfer procedures, including each person's responsibilities and station;

(e) English phrases and hand signals to communicate the instructions listed in WAC 317-40-140(3); and

(f) Emergency shutdown procedures described in 33 CFR 155.780.

(5) If relief personnel are assigned to oil transfer duties, and did not attend the pretransfer training session, the PIC must train them in these duties before they assume oil transfer responsibilities.

(6) The master/officer-in-charge or his designee must record in the vessel's deck log immediately upon completion of any pretransfer training sessions, the date and time of the training session and the name and rating of who attended.

If the receiving vessel is not in service and does not have a deck-rover watch on duty, the PIC may alternatively enter the required information in the engine room log.

#### NEW SECTION

**WAC 317-40-220 Preloading plan.** The receiving vessel's PIC must prepare a preloading plan prior to conducting the training session required in WAC 317-40-210. The receiving PIC must ensure that a copy of the preloading plan is posted at a place where the plan is easily seen by, and in a language common to, vessel personnel engaged in bunkering. The preloading plan must include, at a minimum, the following:

(1) Identification, location and capacity of the vessel's tanks receiving oil;

(2) Level and type of liquid in all bunker tanks prior to the oil transfer;

(3) Final ullage or innage, and percent of each tank to be filled;

(4) Sequence in which the tanks are to be filled; and

(5) Procedures to regularly monitor all tank levels and valve alignments during the transfer operation.

#### NEW SECTION

**WAC 317-40-230 Intrastate operations.** (1) A receiving vessel operating on waters of the state more than fifty percent of the time in a calendar year and that bunkers three or more times in a month must conduct the training session described in WAC 317-40-210 at least once every month.

(2) The receiving vessel's owner or operator must submit a written schedule of the vessel's typical operations to ecology stating:

(a) The vessel's name, call sign, and official number;

(b) The routes served by the vessel;

(c) The number of bunkering operations performed in any thirty days; and

(d) The location and time of bunkering operations.

(3) The receiving vessel's owner or operator must notify ecology as soon as possible when making a change in the vessel's typical operations.

#### NEW SECTION

**WAC 317-40-240 Watchstander duties.** (1) Point-of-transfer watch and deck-rover watch: For covered vessels other than tank barges, OTPs must designate a point-of-transfer watch and a deck-rover watch.

(2) Each watch must be equipped with two-way communications to communicate with the person in charge and vessel master or officer in charge.

(a) The point-of-transfer watch must remain at the point of connection during the oil transfer operation.

(b) The primary duty of the deck-rover watch must be to monitor for oil spills on deck or over the side during the oil transfer operation. The deck-rover watch may also perform

other duties not in conflict with his or her primary duty. The deck-rover watch must:

- (i) Visually inspect the deck, water, and each tank's sounding tube and vent, if accessible;
- (ii) Remain in a position during changing over of tanks or topping off to observe if any spillage on deck or in the water occurs; and
- (iii) Inspect the mooring lines and fendering equipment.

#### NEW SECTION

**WAC 317-40-250 Bunkering by a facility.** The PIC for a vessel conducting an oil transfer with a facility must ensure that the vessel's personnel comply with these rules and with the facility's oil transfer procedures described in the facilities operations manual.

#### NEW SECTION

##### **WAC 317-40-260 Bunkering transfer restrictions.**

(1) The vessel PIC may be in charge of both a delivery and receiving operation for a vessel.

(2) Environmental conditions for bunkering operations at the transfer location:

(a) Winds:

(i) When wind speeds remain at thirty knots or greater for longer than five minutes, the deliverer must log the wind speed and direction in thirty minute intervals during oil transfer operations.

(ii) If during an oil transfer operation winds of forty knots or more for a period of five minutes or more occur, the deliverer must stop pumping and the hoses or piping must be drained and disconnected.

(b) Wave height or sea state:

(i) Oil transfers involving an oil barge and a ship must not begin if the combination of wave and swell height is six feet or greater.

(ii) Oil transfers at regulated facilities must follow the weather criteria in the facilities operations manual and discussed in the pretransfer conference required in this chapter.

(c) Current velocity: If current velocity is predicted or expected to exceed three knots the PICs must discuss and establish ground tackle and mooring line arrangement to handle anticipated line loads and discuss tending arrangements.

#### **PART D: OIL CARGO TRANSFER TO OR FROM A FACILITY**

#### NEW SECTION

**WAC 317-40-300 Cargo transfer plan.** The receiving vessel's PIC must prepare a cargo transfer plan, copies of which must be posted at places where the plan is easily seen by, and in a language common to the receiving tank vessel's personnel engaged in oil transfers. The plan must include at least the following:

- (1) Identification, location and capacity of the vessel's tanks receiving or discharging cargo;
- (2) Level and type of liquid in all cargo tanks prior to the oil transfer;

(3) Final ullage or innage, and percent of each tank to be filled;

(4) Sequence in which the tanks are to be loaded or discharged;

(5) Procedures to regularly monitor all tank levels and valve alignments;

(6) When in the transfer to slow transfer rate for topping off; and

(7) When discharging, document the proper inert gas pressure and percent O<sub>2</sub>.

#### NEW SECTION

**WAC 317-40-310 Oil transfer by a facility.** The PIC for a covered vessel conducting an oil transfer with a facility must ensure that the vessel's personnel comply with these rules and with the facility's oil transfer procedures described in the facilities operations manual.

### **Chapter 173-180 WAC**

#### **FACILITY OIL HANDLING STANDARDS**

##### **PART A: GENERAL REQUIREMENTS**

#### NEW SECTION

**WAC 173-180-010 Applicability of this chapter.** The requirements in this chapter apply to oil transfer operations involving any nonrecreational vessel regardless of size at the following classes of facilities:

(1) Class 1 facilities (as defined in WAC 173-180-025(7)).

(2) Class 2 facilities (as defined in WAC 173-180-025(8)).

(3) Class 3 facilities (as defined in WAC 173-180-025(9)).

(4) Class 4 facilities (as defined in WAC 173-180-025(10)).

#### NEW SECTION

**WAC 173-180-015 Purpose.** This chapter establishes minimum standards for safe oil transfer operations to meet a zero spill goal established by the legislature. This chapter emphasizes:

(1) Using a scaled approach to protect people and the environment;

(2) Preventing oil spills from occurring and emphasizing that oil spill prevention is the top priority strategy for reaching the legislature's goal of zero spills;

(3) Providing improved protection of Washington waters and natural resources from the impacts of oil spills caused by operational errors, human errors, improper oil-handling equipment design and operations;

(4) Minimizing the size and impacts of those oil spills which do occur; and

(5) Facilitating coordination of local, state, regional, tribal, and other prevention and contingency plans.

NEW SECTION

**WAC 173-180-020 Authority.** The legislature granted ecology the authority to adopt these rules under the following statutes:

- (1) RCW 88.46.160 provides statutory authority for regulating the transfer of oil on or over waters of the state.
- (2) RCW 90.56.220 provides statutory authority for developing operations and design standards and implementing a compliance program established by this chapter.
- (3) RCW 90.56.230 provides statutory authority for operations manual preparation and review requirements established by this chapter.
- (4) RCW 90.56.220 provides statutory authority for the personnel training and certification requirements established by this chapter.
- (5) RCW 90.56.200, 90.56.300 and 90.56.310 provide statutory authority for the prevention plan preparation and review requirements established by this chapter.

NEW SECTION

**WAC 173-180-025 Definitions.** (1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection available. The director's determination of best achievable protection must be guided by the critical need to protect the state's natural resources and waters, while considering: The additional protection provided by the measures, the technological achievability of the measures, and the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration: Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and processes that are currently in use. In determining what best achievable technology is, the director must consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil discharged onto the surface of the water.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(6) "Certification" means the documentation that a facility employee has met all requirements of an oil transfer training and certification program that meets the requirements of this chapter.

(7) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Class 2 facility" means a facility as defined in RCW 90.56.010 and is rolling stock such as a truck, railcar, or other mobile device used to transfer oil to a nonrecreational vessel.

(9) "Class 3 facility" means a facility that:

(a) Transfers to a nonrecreational vessel with a capacity to hold ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(10) "Class 4 facility" or "marine fueling outlet" means a facility that:

(a) Transfers to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(11) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(12) "Director" means the director of the department of ecology.

(13) "Directly impact" means without treatment.

(14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(15) "Ecology" means the department of ecology.

(16) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(17) "Innage" means the difference from the surface of the liquid to the tank bottom.

(18) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to

the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(19) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(20) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR Part 302 adopted August 14, 1989, under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(21) "Oil transfer" means a transfer of oil in bulk on or over waters of the state.

(22) "Offshore facility" means any Class 1 facility, as defined in this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(23) "Onshore facility" means any Class 1 facility, as defined in this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(24) "Owner or operator" means:

(a) In the case of a vessel, a person who owns, operates, or charters by demise, a vessel;

(b) In the case of an onshore or offshore facility, a person who owns or operates this type of facility;

(c) In the case of an abandoned vessel or abandoned onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(25) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(26) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(27) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for Class 1, 2, or 3 facilities, or the person with overall responsibility for oil transfer operations if not otherwise designated.

(28) "Process pipelines" means a pipeline used to carry oil within the oil refining/processing units of a Class 1 facility, process unit to tankage piping and tankage interconnecting piping. Process pipelines do not include pipelines used to transport oil to or from a tank vessel or transmission pipeline.

(29) "Recreational vessel" means a vessel operated for pleasure, which when leased, rented, or chartered to another is used for pleasure.

(30) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

(31) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(32) "Spill" means an unauthorized discharge of oil into the waters of the state.

(33) "State" means the state of Washington.

(34) "Storage tank" means all aboveground containers connected to transfer pipelines or any aboveground containers greater than ten thousand gallons (two hundred thirty-eight barrels), including storage and surge tanks, used to store bulk quantities of oil. Storage tanks do not include those tanks regulated by chapter 90.76 RCW, rolling stock, wastewater treatment equipment, process pressurized vessels or other tanks used in the process flow through portions of the facility.

(35) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(36) "Transmission pipeline" means an interstate or intrastate pipeline subject to regulation by the United States Department of Transportation under 49 CFR 195 in effect on the effective date of this section, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(37) "Transfer pipeline" is a buried or aboveground pipeline used to carry oil to or from a tank vessel or transmission pipeline, or to a vessel and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, tank vessel or storage tanks. Instances where the transfer pipeline is not well defined will be determined on a case-by-case basis by ecology.

(38) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(39) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

(40) "Waters of the state" include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

#### NEW SECTION

**WAC 173-180-030 Compliance with federal rule or law.** (1) Any person with oil handling and transfer duties

must comply with applicable provisions of federal law and regulation governing licensing and documentation, equipment, operations and oil transfers.

(2) The following Code of Federal Regulations (CFR) in effect on the effective date of this section are incorporated by reference:

- (a) 33 CFR 156.120, 33 CFR 156.150, 33 CFR 156.170;
- (b) 33 CFR 154.300, 154.310, 154.570, 154.710, 154.1050, 154.1055, and Subpart F;
- (c) 40 CFR 112; and
- (d) 49 CFR 195.

(3) All federal regulations incorporated in this chapter are available through the National Archive and Records Administration web site located here: <http://www.gpoaccess.gov/cfr/index.html>.

#### NEW SECTION

**WAC 173-180-035 Inspections.** (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW 90.56.410 and chapter 88.46 RCW.

(2) During inspections, ecology may ask for the following:

- (a) Provide proof of compliance by producing all required records and documents;
- (b) Demonstrate the ability to meet the spill prevention equipment and procedures of this chapter;
- (c) Demonstrate the ability to meet the transfer containment and recovery standards in WAC 173-180-220; and
- (d) Provide proof of training and certification, if applicable.

(3) Ecology may provide a preliminary inspection report to the owner and operator at the conclusion of the inspection.

#### NEW SECTION

**WAC 173-180-040 Recordkeeping.** (1) Records required by this section must be maintained and available to ecology for a minimum of three years, except for the following:

- (a) Preload plans and declaration of inspection (DOI) kept for at least thirty days from date of the oil transfer operation.
- (b) The design, construction, and repair records for storage tanks, pipelines, and all oil transfer equipment testing and repair records kept for the life of the equipment.
- (c) Oil transfer personnel training and certification records for Class 1 and 2 facilities kept for five years from the date the persons were certified.

(2) All records required in this chapter must be available to ecology for photocopying upon request.

#### NEW SECTION

**WAC 173-180-045 Threat of a spill.** (1) Ecology may determine that immediate action is necessary to suspend or delay transfer operations if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.

(2) Ecology may:

- (a) Issue an administrative order that may require immediate suspension of oil transfers;
- (b) Specify each condition requiring immediate action to eliminate the condition; and
- (c) Notify the PICs that oil transfers may resume once ecology is satisfied the threat is no longer substantial.

#### NEW SECTION

**WAC 173-180-050 Oil spills.** (1) Personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:

- (a) Observed in the water or on the shoreline adjoining the transfer area;
  - (b) Discharged into oil spill containment or on the deck;
- or
- (c) Spilled into the water or onto the shoreline adjoining the transfer area.

(2) The deliverer must immediately stop the oil transfer at the request of any person on the receiving vessel.

(3) The PICs must make notifications as required in RCW 90.56.280.

(4) Before the oil transfer operation may resume:

- (a) The source of the spill is controlled, contained, and a proper response is underway;
- (b) The PICs must agree there is no significant threat to waters of the state or public health; and
- (c) The PICs must receive approval from the state on-scene coordinator in coordination with the federal On-Scene Coordinator.

#### NEW SECTION

**WAC 173-180-055 Work hours.** (1) Personnel with oil transfer duties may not work more than sixteen hours in any twenty-four-hour period nor more than thirty-eight hours in any seventy-two-hour period except in an emergency or spill response operation. For purposes of this section, "emergency" means an unforeseen situation that poses an imminent threat to human safety, or the environment, or substantial loss of property.

(2) The owner or operator of a Class 1, 2, or 3 facility must maintain records such as maintenance records or payroll records demonstrating compliance with work hour restrictions.

#### NEW SECTION

**WAC 173-180-060 Personnel qualifications.** (1) The owner or operator of a Class 1, 2, or 3 facility must designate, in writing, a PIC who has completed a training and certification program established by the operator and approved under Part E of this chapter. The designated PIC must supervise all oil transfer operations.

(2) All personnel assigned duties related to an oil transfer operation must be qualified to perform those duties as required by federal law or rule, or both.

(3) Each PIC must carry or have readily available evidence of designation as a PIC when engaged in an oil transfer operation.

#### NEW SECTION

**WAC 173-180-065 Noncompliance.** Any violation of this chapter may be subject to enforcement and penalty sanctions of chapters 90.56, 90.48, and 88.46 RCW.

#### NEW SECTION

**WAC 173-180-070 Alternative compliance.** (1) Any owner or operator may submit a proposal for alternative compliance for requirements in WAC 173-180-220 Transfer containment and recovery standards.

(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-180-220(6).

(b) Rate B deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-180-220(8).

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking alternative compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the alternative proposal;

(d) A detailed description of the alternative proposal that includes, when appropriate, the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;

(e) A detailed analysis of how the proposal offers equivalent or greater protection, prevention, and response measures as compared to the requirement in this chapter that includes:

(i) Methodology of the analysis;

(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information;

(iii) Technical feasibility of proposal versus current requirements;

(iv) Cost analysis of proposal versus current requirements.

(3) The owner or operator must submit the alternative compliance proposal to ecology at least one hundred twenty calendar days before planned operation under the section.

(4) Ecology will make the proposal available for a thirty-day public review and comment period.

(5) Ecology may request additional information regarding any aspect of the proposal such as site-specific meteorological, water current velocity, and other monitoring data to support the proposal.

(6) Ecology will respond to the owner or operator within ninety days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal.

(7) The approval will be valid for no more than two years from the date on the letter.

(8) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company at the approved site.

(9) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal would provide an equivalent or greater level of environmental protection in terms of spill prevention, preparedness, and response when compared with conventional compliance equipment, personnel, operating procedures, and maintenance systems.

(10) The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology.

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Alternative Compliance Review  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Alternative Compliance Review  
300 Desmond Drive  
Lacey, WA 98503

#### NEW SECTION

**WAC 173-180-075 Severability.** If any provision of this chapter is held invalid, the remainder of this chapter is not affected.

### **PART B: OIL TRANSFER REQUIREMENTS**

#### NEW SECTION

**WAC 173-180-200 Applicability of Part B.** (1) Part B applies to Class 1, 2, 3, and 4 facilities.

(2) Requirements for Class 1, 2, and 3 facilities are found in WAC 173-180-205 and 173-180-215 through 173-180-250.

(3) Requirements for Class 4 facilities are found in WAC 173-180-205 and 173-180-210.

#### NEW SECTION

**WAC 173-180-205 Oil transfer equipment at Class 1, 2, 3, and 4 facilities.** (1) All hoses or piping used in an oil transfer operation must meet the following criteria:

(a) Hoses or piping must be supported so as to avoid crushing or excessive strain. Flanges, joints, hoses, and piping must be visually checked prior to the transfer for cracks and signs of leakage.

(b) All hoses and loading arms are long enough to allow the vessel to move to the limits of its moorings without placing strain on any component of the oil transfer equipment.

(c) Each hose must have no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of oil or hazardous material through the hose material and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement ("reinforcement" means



the strength members of the hose, consisting of fabric, cord and/or metal).

(d) Hoses or piping must not be permitted to chafe on the dock or vessel or be in contact with any source that might affect the integrity of the hoses.

(e) Hose ends must be blanked tightly when hoses are moved into position for connection, also immediately after they are disconnected, and residue drained either into the vessel tanks or into suitable shore receptacles before they are moved away from their connections.

(2) Testing of all oil transfer equipment, including, but not limited to, pumps, valves, piping, manifolds, connections, and hoses, must be done annually, and must be conducted by using one of the following methods:

(a) In accordance with manufacturers' recommendations and industrial standards; or

(b) Procedures identified in 33 CFR 156.170.

(3) All records of tests and repairs must be kept and made available to ecology for the life of the equipment.

#### NEW SECTION

**WAC 173-180-210 Requirements for Class 4 facilities only.** (1) **Response and recovery equipment:** The owner or operator of each Class 4 facility must ensure that cleanup of at least a twenty-five gallon spill can occur by having all of the following:

Response and recovery equipment maintained in a standby condition and available to the receiving vessel:

(a) Sufficient and appropriate boom of no less than two hundred feet available in the standby position;

(b) Oil spill sorbent materials appropriate for use in water and on land;

(c) Nonsparking hand scoops, shovels, and buckets;

(d) Containers suitable for holding the recovered oil and oily water; and

(e) Protective clothing and other appropriate personal protective gear necessary to safely respond to oil spills.

(2) **Trained personnel:** The owner or operator of each Class 4 facility must:

(a) Provide annual training for employees involved in an oil transfer operation, that at a minimum includes:

(i) Dangers and safe practices regarding the petroleum products transferred at that location;

(ii) Safe and effective use and handling of response and recovery equipment; and

(iii) Spill notification procedures.

(b) The facility must train all employees with oil transfer duties within ninety calendar days of the date of hire.

(c) No employee may be in charge of an oil transfer operation at the Class 4 facility without proper training.

(d) Keep a record of oil transfer training at the facility and make the record available to ecology upon request.

(3) **Spill notification information:** The owner or operator of each Class 4 facility must provide spill notification information on a wallet-sized card for each employee and posted at the dock for fueling customers. The notification information must include:

(a) Required notifications in RCW 90.56.280;

(b) A phone number for a spill response contractor; and

(c) If the Class 4 facility is not always staffed, a twenty-four-hour phone number where someone designated by the owner or operator of the facility can be reached to start the spill response. The contact phone number must be posted on the dock or transfer site in a location that is easy to see.

(4) The owner or operator of each Class 4 facility must ensure all oil transfer equipment is properly inspected and maintained in accordance with WAC 173-180-205.

(5) Class 4 facilities, also known as marine fueling outlets, that are transferring less than three thousand gallons of oil in a single transaction, are exempt from advance notice requirements for oil transfer operations as described in RCW 88.46.160.

(6) **Semiannual reporting:** Class 4 facilities must report all bulk oil transfers conducted at the facility.

(a) The report must include types of oil transferred and total volume of transfers by oil type.

(b) The facility must submit the report to ecology by January 15 and July 15 of each year.

(c) The facility must submit the report either by e-mail or by U.S. mail to the following address:

E-mail: [oiltransfernotifications@ecy.wa.gov](mailto:oiltransfernotifications@ecy.wa.gov)

U.S. mail:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

P.O. Box 47600

Olympia, WA 98504-7600

(7) **Compliance schedule:** Class 4 facilities must implement the requirements in subsections (1) and (2) of this section within ninety calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this section.

#### NEW SECTION

**WAC 173-180-215 Advance notice of transfer for Class 1, 2, and 3 facilities.** (1) The delivering facility involved in an oil transfer must notify ecology at least twenty-four hours prior to an oil transfer operation; except: If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible.

(2) The notice of transfer must be submitted to ecology on the "Advanced Notice of Transfer" form provided by ecology or a facsimile, and must contain the following information in the order provided:

(a) Company name, address, contact person and telephone number of organization delivering the oil;

(b) Date of transfer operation, estimated starting time, and duration of the oil transfer operation;

(c) Name of delivering facility and receiving vessel involved in the oil transfer including LR/IMO or official number if available;

(d) City name and either the address or location/anchorage where the oil transfer operation will occur;

(e) Oil product type and quantity in gallons; and

(f) Whether or not prebooming will take place? (yes or no).

(3) Notification may be made by the deliverer's agent or other contracted representative.

(4) The notification form may be submitted via internet web site established by ecology, e-mail, or facsimile. The notification form and contact information is found on ecology's web site: <http://www.ecy.wa.gov/programs/spills/spills.html>

(5) Compliance schedule: All Class 1, 2, and 3 facilities must begin submitting advance notice within thirty calendar days of the effective date of this chapter.

#### NEW SECTION

**WAC 173-180-220 Transfer containment and recovery standards.** This section applies to all oil transfers involving all jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. This section does not apply to vessels or facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(1) All persons delivering oil to nonrecreational vessels over waters of the state must comply with the following requirements:

(a) There are two rates for oil transfer containment and recovery standards. The deliverer must determine which rate is appropriate for each oil transfer operation they conduct.

(i) Rate A: Oil transfer operations at a rate over five hundred gallons per minute; and

(ii) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less.

(b) Rate A oil transfers must preboom when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measures in subsection (6) of this section. Prebooming requirements are found in subsection (5) of this section.

(c) Rate B oil transfer operations must choose one of the following:

(i) Preboom when safe and effective (subsection (7) of this section); or

(ii) Alternative measures (subsection (8) of this section).

(d) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design based on the manufacturers' specifications for the environmental conditions of the transfer area.

(e) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(f) If multiple oil transfers are occurring with a single vessel and one product transferred is not appropriate to preboom, then the entire transfer must meet the alternative measures.

(2) Determination of safe and effective: The Rate A deliverer must determine when it is not safe and effective to meet the "Rate A prebooming requirements" in subsection (5) of this section, either prior to starting a transfer or during a transfer. To make this determination the deliverer must:

(a) Class 1 and Class 2 facilities must refer to the facility's operation manual safe and effective threshold values;

(b) Consider personnel safety, wind, sea state, current velocity, or other environmental conditions that would prevent the safe and effective use of boom.

(3) Rate A deliverers are required to report to ecology when the deliverer determines it is not safe and effective to preboom. The *Ecology Boom Reporting Form* publication may be submitted by e-mail or facsimile. The report must be submitted prior to the oil transfer or when conditions develop which require removal of the boom.

(4) Compliance schedule:

(a) Any class facility conducting Rate A transfers must meet all the requirements in this section except subsection (5) of this section within ninety calendar days from the effective date of this chapter. All Rate A transfers must meet the requirements of subsection (5) of this section within one hundred eighty calendar days from the effective date of the chapter.

(b) Any class facility conducting Rate B transfers must meet all the requirements of this section within ninety calendar days from the effective date of this chapter.

(5) Rate A prebooming requirements.

(a) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom four times the length of the largest vessel at the transfer location.

(ii) Deploy boom, identified in (a)(i) of this subsection, sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil.

(iii) Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(iv) Check the boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(v) Have personnel trained in the proper use and maintenance of boom and recovery equipment.

(vi) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of the remaining boom (identified in (a)(i) of this subsection) for containment, protection or recovery.

(6) Rate A alternative measures:

(a) Rate A deliverers may only use these alternative measures when it is not safe and effective to meet the prebooming requirements in subsection (5) of this section.

(b) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom four times the length of the largest vessel at the transfer location.

(ii) Give their primary response contractor advance notice of the transfer including the location, duration and product type.

(iii) Have the ability to safely track the spill in the dark if the oil transfer operation occurs during low light conditions. The tracking system must be on scene within thirty minutes of being made aware of a spill.

(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment.

(v) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) Within one hour of being made aware of a spill the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil is most effectively contained in the event of a spill.

(d) Within two hours of being made aware of a spill, the deliverer must have all of the following:

(i) Additional boom four times the length of the largest vessel at the transfer location available for containment, protection, or recovery; and

(ii) A skimming system must be available on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

(7) Rate B prebooming requirements:

(a) A deliverer transferring at Rate B may choose to meet the prebooming requirements in this subsection or the alternative measure requirements in subsection (8) of this section.

(b) Prior to starting the oil transfer operation the deliverer must:

(i) Deploy boom that completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil;

(ii) Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;

(iii) Check boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;

(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment; and

(v) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(vi) Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional five hundred feet of boom. This boom may be used for containment, recovery, or protection.

(8) Rate B alternative measures:

(a) Prior to starting the oil transfer operation the deliverer must:

(i) Have access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of oil from the transfer containment.

(ii) Have personnel trained in the proper use and maintenance of boom and recovery equipment.

(iii) Have the following recovery equipment available on-site:

(A) Containers suitable for holding the recovered oil and oily water;

(B) Nonsparking hand scoops, shovels, and buckets; and

(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of an additional five hundred feet of boom for containment, protection or recovery.

(c) Within two hours of being made aware of a spill, the deliverer must have an additional five hundred feet of boom available on-scene for containment, protection, or recovery.

#### NEW SECTION

**WAC 173-180-225 Providing safe vessel access.** (1) A receiving vessel must have an accommodation ladder in place to use for access between the receiving and delivering vessel, or between the receiving vessel and facility.

(2) If the delivering vessel determines that the ladder is inaccessible or unsafe, another means of access must be provided that meets the standards established in the International Convention for the Safety of Life at Sea, 1974, as consolidated in 1986 (SOLAS).

(3) If the vessel master or PIC determines access is not safe due to winds, sea state, currents or other environmental conditions, the master or PIC may allow communication by radio or by other means described in WAC 317-40-125.

(4) The entire ladder and the portion of the ship's deck where access is provided must be illuminated during low light situations and without glare to the persons using the ladder.

#### NEW SECTION

**WAC 173-180-230 Preloading or cargo transfer plan requirement.** (1) All nonrecreational vessels must prepare a transfer plan prior to receiving oil from a Class 1, 2, or 3 facility. The plan must be discussed with the facility PIC during the pretransfer conference described in WAC 173-180-235. The plan must, at a minimum, include:

(a) Identification, location and capacity of the vessel's tanks receiving oil;

(b) Level and type of liquid in all bunker or cargo oil tanks prior to the oil transfer;

(c) Final ullage or innage, and percent of each tank to be filled;

(d) Sequence in which the tanks are to be filled; and

(e) The vessel's procedures to regularly monitor all tank levels and valve alignments during the transfer operation.

(2) A covered vessel may use the preloading plan or cargo plan required in chapter 317-40 WAC to meet the requirements of this section.

#### NEW SECTION

**WAC 173-180-235 Pretransfer conference.** (1) Before the start of an oil transfer operation, the PICs must hold a face-to-face pretransfer conference unless the vessel's master/officer-in-charge determines it is unsafe under WAC 317-40-120.

(2) The PICs must discuss and agree upon:

- (a) The preloading or cargo plan;
- (b) The contents of the declaration of inspection (DOI) required under 33 CFR 156.150;
- (c) Procedures for communicating soundings, changing over tanks, and beginning topping off;
- (d) Shift change procedures;
- (e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and
- (f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.

(3) During the pretransfer conference, that involves a covered vessel, the receiving vessel PIC must identify for the facility PIC those personnel designated as point-of-transfer watch and deck-rover watch.

(4) An oil transfer operation will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.

(a) The receiving vessel's owner or operator must provide an interpreter proficient in English and a language common to the vessel's officers and crew at the request of ecolog, the facility's PIC, or the U.S. Coast Guard.

(b) If the delivering vessel's PIC is not satisfied with the receiving vessel's representative's English proficiency, the delivering PIC must request an interpreter at the expense of the receiving vessel's owner or operator.

#### NEW SECTION

**WAC 173-180-240 Communications.** (1) The delivering PIC must ensure continuous two-way voice communication is usable and available in all weather conditions as well as all phases of the transfer operation between the PICs.

(2) The delivering PIC must ensure at least the following are available for use during the oil transfer operation:

- (a) Two portable communication devices that are intrinsically safe; and
  - (b) An air horn for emergency signals.
- (3) The PICs must ensure personnel involved in the oil transfer operation know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

#### NEW SECTION

**WAC 173-180-245 Oil transfer procedures.** For all transfer operations involving Class 1, 2, or 3 facilities must comply with the transfer procedures in 33 CFR 156 and 154 and the following:

(1) All oil transfer operations must be conducted in accordance with the facility's approved operations manual.

(2) Ensure that transfer connections have been made according to the operations manual:

- (a) Use appropriate material in joints and couplings to ensure a leak-free seal;
- (b) Use either:
  - (i) A bolted or full threaded connection; or
  - (ii) A quick-connected coupling with a means of securing the coupling to prevent accidental release.
- (c) Use a new compressible gasket appropriate for the product and transfer pressure;
- (d) Use a bolt in every available hole;
- (e) Use bolts of the correct size in each bolted connection;
- (f) Ensure that each bolt is properly torqued to distribute the load to ensure a leak-free seal;
- (g) Do not use any bolt that shows signs of strain or is elongated or deteriorated.

(3) Have the means to contain and recover any drips from connections within the oil transfer system.

(4) Deliverers providing oil to vessels without fixed containment must use automatic back pressure shutoff nozzles and also provide enough portable containment for each tank vent on the vessel.

(5) Conduct a pretransfer conference as defined in WAC 173-180-235.

(6) Ensure that the available capacity in the receiving tank(s) is (are) greater than the volume of oil to be transferred and all other valves which could influence the routing of the transferred oil are properly aligned.

(7) The PICs must verify at the start of the transfer that the tanks designated in the preload or cargo transfer plan are receiving oil at the expected rate.

(8) Each PIC must ensure that the means of operating the emergency shutdown system is immediately available while oil is transferred between the deliverer and receiver.

(9) A PIC must refuse to initiate or must cease transfer operations with any vessel which:

- (a) Has not provided complete information as required by the DOI;
- (b) Has refused to correct deficiencies identified by the PIC during the pretransfer conference; or
- (c) Does not comply with the operations manual or does not respond to concerns identified by the PIC.

(10) When a PIC shift change occurs the departing PIC must:

- (a) Discuss the preload plan and transfer rate with the arriving PIC;
- (b) Notify the PIC at the other side of the transfer that a shift change is taking place; and
- (c) Ensure the relieving PIC reads and signs the DOI.

NEW SECTION

**WAC 173-180-250 Emergency shutdown.** (1) Class 1, 2, or 3 facilities must have an emergency shutdown capable of stopping the flow of oil from the fixed or mobile facility to a vessel.

(2) The emergency shutdown must be located at the PICs usual operating station and at the dock manifold if not the same location.

(3) For oil transfers, the emergency shutdown must stop the flow:

(a) Within thirty seconds for a facility with fixed piping system; or

(b) Immediately for a facility equipped with flexible hoses.

(4) Both PICs must be capable of ordering or activating the emergency shutdown.

(5) If a PIC orders an emergency shutdown, the shutdown must be activated immediately.

(6) To meet the requirements of subsection (3) of this section, the emergency shutdown must be either of the following:

(a) An electrical, pneumatic, or mechanical linkage to the facility; or

(b) An electronic voice communications system continuously operated by a person on the facility who can stop the flow of oil.

**PART C: DESIGN STANDARDS FOR CLASS 1 FACILITIES**

NEW SECTION

**WAC 173-180-300 Applicability of Part C.** Part C applies to Class 1 facilities only. Ecology has not adopted design standards for Class 2, 3, or 4 facilities.

NEW SECTION

**WAC 173-180-310 Transmission pipeline transfer requirements.** (1) For the purposes of this section:

(a) "Appropriate person" means a person designated by the facility as being competent and trained to implement a designated function.

(b) "Pipeline operator" means the operator of a transmission pipeline.

(2) General requirements. No person may conduct an oil transfer operation to or from a transmission pipeline unless the appropriate person and the pipeline operator have conducted pretransfer communications which identify:

(a) Type of oil;

(b) Transfer volume;

(c) Flow rates;

(d) Transfer startup or arrival time.

(3) Class 1 facilities which receive oil from a transmission pipeline must:

(a) Confirm that the proper manifold and valves are open and ready to receive product;

(b) Notify the transmission pipeline operator when a storage tank has less than one foot of oil above the inlet nozzle;

(c) Coordinate arrival time of oil with the pipeline operator;

(d) Confirm the available storage capacity for transfers to a facility;

(e) Ensure that only the designated tank(s) is (are) receiving oil;

(f) Ensure that proper transfer alignment of the pipeline, valves, manifolds and storage tanks have been made;

(g) Establish adequate communication in English between the facility and pipeline operator;

(h) For the purpose of scheduling inspections, ecology may require a twenty-four-hour notification to ecology in advance of any transfer of bulk oil by a facility operator. Ecology must request notification in writing when this procedure is required;

(i) Transfer operations must be supervised by an appropriate person;

(j) Each facility operator must ensure that the means of operating or requesting emergency shutdown is immediately available while oil is being transferred between the facility and the pipeline;

(k) If startup, shutdown, and/or emergency shutdown are controlled by the pipeline operator directly using instrumentation and control devices, the accuracy of these devices must be checked at least annually; and

(l) All transfer operations must be conducted in accordance with operations manuals approved under this chapter.

NEW SECTION

**WAC 173-180-320 Secondary containment requirements for aboveground storage tanks.** (1) Aboveground oil storage tanks must be located within secondary containment areas. Secondary containment systems must be:

(a) Designed, constructed, maintained and operated to prevent discharged oil from entering waters of the state at any time during use of the tank system;

(b) Capable of containing one hundred percent of the capacity of the largest storage tank within the secondary containment area;

(c) Constructed with materials that are compatible with stored material to be placed in the tank system;

(d) Soil may be used for the secondary containment system, provided that any spill onto the soil will be sufficiently contained, readily recoverable and will be managed in accordance with the provisions under WAC 173-303-145 spills and discharges and any other applicable regulation;

(e) Constructed with sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the fluid stored in the storage tank, climatic conditions, and the stresses of daily operations (including stresses from nearby vehicular traffic);

(f) Placed on a base or foundation capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression or uplift;

(g) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked oil and accumulated precipitation

must be removed from the secondary containment system in a manner which will provide the best achievable protection of public health and the environment; and

(h) Visually inspected monthly to confirm secondary containment integrity. Items requiring attention as determined by the visual inspection must be documented. Records must be kept on-site for a minimum of three years.

(2) The secondary containment system must be maintained to prevent a breach of the dike by controlling burrowing animals and weeds.

(3) The secondary containment system must be maintained free of debris and other materials which may interfere with the effectiveness of the system, including excessive accumulated precipitation.

(4) The facility must maintain at least one hundred percent of the working capacity of the largest storage tank within the secondary containment area at all times.

(5) All secondary containment pumps, siphons and valves must be properly maintained and kept in good working order.

(6) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive shutoff valves or other positive means to prevent a discharge. Valves must be kept closed except when the discharge from the containment system is in compliance with chapter 90.48 RCW, Water pollution control. Valves must be locked closed when the facility is unattended. Necessary measures must be taken to ensure secondary containment valves are protected from inadvertent opening or vandalism. There must be some means of readily determining valve status by facility personnel such as a rising stem valve or position indicator.

(7) The owner or operator must inspect or monitor accumulated water before discharging from secondary containment to ensure that no oil will be discharged to the waters of the state. All water discharges must comply with state water quality program regulations as described in chapter 90.48 RCW.

(8) Ecology may require oil containers less than ten thousand gallons (two hundred thirty-eight barrels) capacity to have secondary containment when the container is located less than six hundred feet from navigable waters of the state or a storm water or surface drains which may impact navigable waters of the state.

(9) A secondary containment system constructed after the adoption date of this rule must be installed as follows:

(a) In accordance with the 1993 version of the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30, section 2-3.4.3;

(b) Secondary containment systems must be capable of containing one hundred percent of the capacity of the largest storage tank within the secondary containment area;

(c) Secondary containment systems must be designed to withstand seismic forces;

(d) Drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements; and

(e) Secondary containment systems must be designed and constructed in accordance with sound engineering practice and in conformance with the provisions of this section.

#### NEW SECTION

##### **WAC 173-180-330 Storage tank requirements.** (1)

Storage tanks constructed after the adoption date of this section must meet or exceed the 1993 version of the National Fire Protection Association (NFPA No. 30) requirements and one of the following design and manufacturing standards:

(a) UL No. 142, Steel Aboveground Tanks for Flammable and Combustible Liquids dated April 1993;

(b) API Standard 650, Welded Steel Tanks for Oil Storage dated November 1988;

(c) API Standard 620, Design and Construction of Large Welded, Low-Pressure Tanks dated June 1990; or

(d) Another standard approved by ecology.

(2) The owner or operator must ensure that the means of preventing storage tank overfill comply with the 1993 version of the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30, Chapter 2, Section 2-10.

(3) Storage tanks must be maintained, repaired and inspected in accordance with the requirements of API 653 dated January 1991, unless the operator proposes an equivalent inspection strategy which is approved by ecology.

(4) A record of all inspection results and corrective actions taken must be kept for the service life of the tank and must be available to ecology for inspection and copying upon request.

#### NEW SECTION

##### **WAC 173-180-340 Transfer pipeline requirements.**

(1) Pipelines replaced, relocated or constructed after the adoption date of this rule which are located in areas not controlled by the facility must be installed in accordance with 49 CFR 195.246 through 49 CFR 195.254 as amended on October 8, 1991, where feasible. Facility control is established by fencing, barriers or other method accepted by ecology which protects the pipe right of way and limits access to personnel authorized by the facility.

(2) All pipelines must be protected from third party damage in a reasonable manner and be able to withstand external forces exerted upon them. This must be done by:

(a) Registering all underground pipelines located in public right of way areas in the local one call system if available;

(b) Maintaining accurate maps for all underground piping located outside the facility. The maps must identify pipe size and location. The approximate depths of pipelines must be identified for pipelines which do not comply with 49 CFR 195.248 as amended on October 8, 1991;

(c) Marking all piping located in areas not controlled by the facility in accordance with 49 CFR 195.410 as amended on October 8, 1991;

(d) Providing easement inspections of areas identified by (b) of this subsection on a weekly basis to determine if there is any uncommon activity occurring which may affect the integrity of the pipeline;

(e) Ensuring that pipelines at each railroad, highway or road crossing are designed and installed to adequately withstand the dynamic forces exerted by anticipated traffic loads.

(3) Pipelines constructed after the adoption date of this section must be designed and constructed in accordance with the American Society of Mechanical Engineers (ASME) Standard for pressure piping ASME B31.3 or B31.4 issued March 15, 1993, in effect during the time of construction or any other standard accepted by ecology.

(4) Pipelines must be inspected in accordance with API 570, 1993, Piping Inspection Code. As an alternative to complying with API 570, the facility must comply with the following requirement: Buried pipelines constructed after the adoption date of this rule must be coated. Coatings must be designed and inspected to meet the following conditions consistent with the definition of best achievable protection:

(a) Coatings must effectively electrically isolate the external surfaces of the pipeline system from the environment.

(b) Coatings must have sufficient adhesion to effectively resist underfilm migration of moisture.

(c) Coatings must be sufficiently ductile to resist cracking.

(d) The coating must have sufficient impact and abrasion resistance or otherwise be protected to resist damage due to soil stress and normal handling (including concrete coating application, installation of river weights and anode bracelet installation, where applicable).

(e) The coating must be compatible with cathodic protection.

(f) The coating must be compatible with the operating temperature of the pipeline.

(g) Coatings must be inspected immediately before, during, or after pipe installation to detect coating faults. Faults in the coating must be repaired and reinspected.

(5) All buried coated pipelines must have properly operated cathodic protection which is maintained during the operational life of the pipeline system. Cathodic protection must be maintained on pipeline systems which are out-of-service but not abandoned unless the operator can show that the pipeline integrity has been properly monitored and secured as approved by ecology prior to operation of the abandoned pipeline. Pipeline owners or operators may perform a corrosion study to demonstrate that cathodic protection is not required as an option to installing cathodic protection. Corrosion studies must follow the following guidelines as a minimum:

(a) Corrosion studies must be completed by a professional engineer with experience in corrosion control of buried pipelines, a NACE certified corrosion specialist or by a person knowledgeable and qualified to perform the required testing and inspection who is approved by ecology.

(b) Corrosion studies for pipelines must include at a minimum, the following:

(i) Pipeline thickness and corrosion rate for existing pipelines;

(ii) Presence of stray DC currents;

(iii) Soil resistivity/conductivity;

(iv) Soil moisture content;

(v) Soil pH;

(vi) Chloride ion concentration; and

(vii) Sulfide ion concentration.

(6) All pipelines with cathodic protection are subject to the following requirements where applicable:

(a) Cathodic protection systems must be tested to determine system adequacy on an annual basis.

(b) Impressed current cathodic protection rectifiers must be inspected every two months.

(c) Where insulating devices are installed to provide electrical isolation of pipeline systems to facilitate the application of corrosion control, they must be properly rated for temperature, pressure and electrical properties, and must be resistant to the commodity carried in the pipeline system.

(d) Buried pipeline systems must be installed so that they are not in electrical contact with any metallic structures. This requirement must not preclude the use of electrical bonding to facilitate the application of cathodic protection.

(e) Tests must be carried out to determine the presence of stray currents. Where stray currents are present, measures must be taken to mitigate detrimental effects.

(7) Buried bare pipelines must be inspected in accordance with section 7 of API 570 dated June 1993. Pipeline thickness and corrosion rates must be determined at an interval of no more than half of the remaining life of the pipeline as determined from corrosion rates or every five years whichever is more frequent. Pipeline thickness and corrosion rate must be initially established within thirty-six months after the adoption date of this section. The pipeline must be operated in accordance with American Society of Mechanical Engineers (ASME) supplement to ASME B31G-1991 entitled *Manual for Determining the Remaining Strength of Corroded Pipe* for transmission pipelines issued June 27, 1991, API 570 dated June 1993 or a standard approved by ecology.

(8) Whenever any buried pipe is exposed for any reason, the operator must provide a nondestructive examination of the pipe for evidence of external corrosion. If the operator finds that there is active corrosion, the extent of that corrosion must be determined and if necessary repaired.

(9) Each facility must maintain all pumps and valves that could affect waters of the state in the event of a failure. Transfer pipeline pumps and valves and storage tank valves must be inspected annually and maintained in accordance with the manufacturers' recommendations or an industrial standard approved by ecology to ensure that they are functioning properly. Valves must be locked when the facility is not attended. Necessary measures must be taken to ensure that valves are protected from inadvertent opening or vandalism if located outside the facility or at an unattended facility.

(10) A written record must be kept of all inspections and tests covered by this section.

(11) Facilities must have the capability of detecting a transfer pipeline leak equal to eight percent of the maximum design flow rate within fifteen minutes for transfer pipelines connected to tank vessels. Leak detection capability must be determined by the facility using best engineering judgment. Deficiencies with leak detection systems such as false alarms must be addressed and accounted for by the facility. Facilities may meet these requirements by:

(a) Visual inspection provided the entire pipeline is visible and inspected every fifteen minutes; or

- (b) Instrumentation; or
- (c) Completely containing the entire circumference of the pipeline provided that a leak can be detected within fifteen minutes; or
- (d) Conducting an acceptable hydrotest of the pipeline immediately before the oil transfer with visual surveillance of the exposed pipeline every fifteen minutes; or
- (e) A combination of the above strategies; or
- (f) A method approved by ecology which meets the standard identified in this section; or
- (g) Leak detection system operation and operator response must be described in the facility operations manual.

#### **PART D: OPERATIONS MANUAL REQUIREMENTS FOR CLASS 1 AND CLASS 2 FACILITIES**

##### NEW SECTION

**WAC 173-180-400 Applicability of Part D.** (1) Part D applies to both Class 1 and Class 2 facilities. Ecology has not adopted operation manual requirements for Class 3 or 4 facilities.

(a) WAC 173-180-405 through 173-180-440 covers Class 1 facilities.

(b) WAC 173-180-445 through 173-180-475 covers Class 2 facilities.

(2) Class 1 and 2 facilities must prepare, submit, and implement an operations manual pursuant to the requirements in this chapter.

(3) All oil transfer operations must be conducted in accordance with the facilities operations manual. The owner or operator and PIC for Class 1 and 2 facilities transferring oil to a nonrecreational vessel must ensure that the receiving vessel's personnel comply with the facility operations manual.

(4) Class 1 and 2 facilities must maintain all equipment and perform operations in accordance with the operations manual.

##### NEW SECTION

**WAC 173-180-405 Class 1 facility—Operations manual.** (1) Each facility must keep the operations manual in an immediately accessible location.

(2) Facilities must ensure that all employees involved in oil transfer operations, or storage operations, are familiar with the operations manual provisions through regular and new employee training.

##### NEW SECTION

**WAC 173-180-410 Class 1 facility—Operations manual preparation.** (1) Each Class 1 facility must prepare an operations manual, which at a minimum, meets the requirements of this chapter.

(2) The operations manual must be thorough and contain enough information, analyses, supporting data, and documentation to demonstrate the manual holder's ability to meet the requirements of this chapter.

(3) The Class 1 facility may submit their Coast Guard operations manuals required under 33 CFR 154.300 to satisfy operations manual requirements under this chapter if:

(a) Ecology deems that such federal requirements equal or exceed those of ecology; or

(b) The Class 1 facility modifies or appends the operations manual to satisfy requirements under this chapter.

##### NEW SECTION

**WAC 173-180-415 Class 1 facility—Operations manual format requirements.** Operations manuals must:

(1) Have a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures;

Where applicable, topics identified in the table of contents may be cross referenced with other submissions required by chapter 90.56 RCW including contingency and prevention plans, or 33 CFR 154 provided that a copy of the *Coast Guard Operations Manual* has been submitted to ecology.

(2) Allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire operations manual; and

(3) Have a log sheet to record amendments to the operations manual. The log sheet must:

(a) Be placed at the front of the operations manual;

(b) Provide for a record of the section amended, the date the old section was replaced with the amended section, and the initials of the individual making the change;

(c) Include a description of the amendment; and

(d) Include a description of the amendment's purpose or filed in the form of an amendment letter immediately following the log sheet.

##### NEW SECTION

**WAC 173-180-420 Class 1 facility—Operations manual content requirements.** (1) The operations manual must describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.

(2) The operations manual submitted to ecology must contain a submittal agreement which:

(a) Includes the name, address, and phone number of the submitting party;

(b) Verifies acceptance of the operations manual by the owner or operator of the Class 1 facility by either signature of the owner or operator or signature by a person with the authority to bind the corporation which owns such facility;

(c) Commits execution of the operations manual by the owner or operator of the Class 1 facility, and verifies authority for the operations manual holder to make appropriate expenditures in order to execute operations manual provisions; and

(d) Includes the name, location, and address of the facility, type of facility, and starting date of operations of the facility covered by the operations manual.



(3) Operations manuals must address at a minimum the following topics for oil transfer operations to or from Class 1 facilities:

(a) General facility information including:

(i) The geographic location of the facility shown on a topographic map;

(ii) A physical description of the facility including a plan of the facility showing mooring areas, transfer locations, control stations, oil flow patterns, and locations of safety equipment;

(iii) A statement identifying facility operation hours;

(iv) A brief summary of applicable federal, state, and local oil pollution laws and regulations;

(v) Recordkeeping procedures and sample forms which are associated with the requirements in this chapter;

(vi) Overfill prevention procedures must be described for transfers to storage tanks and tank vessels in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10;

(vii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for transfer pipelines, pumps and valves;

(viii) A description of all oil types transferred to or from the facility including:

(A) Generic and chemical name;

(B) A description of the appearance of the oil;

(C) The hazards involved in handling the oil; and

(D) Instructions for safe handling of oil;

(ix) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;

(x) A list of fire fighting procedures and extinguishing agents effective with fires involving the oil;

(xi) Instructions in the use of each communication system;

(xii) Detailed procedures for:

(A) Operating each hose system and loading arm including the limitations of each loading arm;

(B) Transferring oil, including startup, topping off, and shutdown;

(C) Completion of pumping; and

(D) Quantity, type, location, and instructions for use of all transfer monitoring devices;

(xiii) A discussion of the leak detection system and/or procedures implemented by the facility;

(xiv) The location and facilities of each personnel shelter, if any; and

(xv) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system.

(b) Facility procedures for oil transfers to or from non-recreational vessels including, at a minimum:

(i) Discussion of the sizes, types, and number of vessels that the facility can transfer oil to or from, including simultaneous transfers;

(ii) Discussion of equipment and procedures required for all vessels which transfer oil to or from the facility;

(iii) Procedures for verifying that vessels meet facility requirements and operations manual procedures;

(iv) Discussion of the minimum number of persons or equipment required to perform transfer operations and their duties, including transfer watchmen;

(v) A description and instructions for the use of drip and discharge collection and vessel slop reception facilities, if any;

(vi) If applicable, procedures for shielding portable lighting;

(vii) Discussion of the facility's requirements regarding weather and sea conditions at the facility which may impact oil transfers to or from vessels. The supporting data for oil transfer weather and sea restrictions must be made available to ecology if requested and include at a minimum:

(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;

(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;

(C) Monitoring forecasted weather and sea;

(D) Procedures for communicating weather and sea conditions to the PICs at regular intervals;

(E) Threshold values for weather and sea conditions above which transfer operations must cease; and

(F) Procedures for shutting down the oil transfer should weather or seas exceed threshold values.

(c) Threshold values determination when a facility will not preboom under WAC 173-180-220 must be in the operations manual for approval and easily found by the PIC. The information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations. The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology.

(i) These values and the supporting data must address, at a minimum, the following site specific information:

(A) Personnel safety;

(B) Sea state values in feet including typical wave periods;

(C) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;

(D) Wind speed in knots and prevailing directions;

(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.

(ii) The facility must provide a detailed analysis of the proposed threshold values for the transfer site including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected;

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(iii) When reviewing threshold determination reports, ecology must consider the following:

(A) Personnel safety;

(B) Operating environment of the transfer site(s) such as site specific meteorological, water current velocity and other monitoring data to support the threshold values determination;

(C) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;

(D) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.

(iv) Ecology will make the report available for a thirty-day public review and comment period.

(d) Facility emergency procedures, at a minimum:

(i) Procedures for reporting and initial containment of oil discharges;

(ii) The names and telephone numbers of facility, federal, state, local and other personnel who may be called by the employees of the facility in case of an emergency;

(iii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;

(iv) Quantity, type, location, instructions for use, and time limits for gaining access to containment equipment; and

(v) Quantity, type, location, and instructions for use of fire extinguishing equipment.

(e) For facilities that transfer to or from transmission pipelines the operations manual must address, at a minimum, the following topics:

(i) The geographic location of the facility shown on a topographic map;

(ii) A physical description of the facility including a plan of the facility showing transfer locations, control stations, oil flow patterns, and locations of safety equipment;

(iii) A statement identifying facility operation hours;

(iv) A description of all oil types transferred to or from the facility including:

(A) Generic and chemical name;

(B) The name of the oil;

(C) A description of the appearance of the oil;

(D) A description of the odor of the oil;

(E) The hazards involved in handling the oil; and

(F) Instructions for safe handling of oil;

(v) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;

(vi) A list of fire fighting procedures and extinguishing agents effective with fires involving the oil;

(vii) A discussion of the minimum number of persons required to perform transfer operations and their duties;

(viii) The names and telephone numbers of facility, federal, state, local and other personnel who may be called by the employees of the facility in case of an emergency;

(ix) The duties of the facility operator;

(x) A description of each communication system;

(xi) The location and facilities of each personnel shelter, if any;

(xii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;

(xiii) Quantity, types, locations, and instructions for use of monitoring devices;

(xiv) Quantity, type, location, instructions for use, and time limits for gaining access to containment equipment;

(xv) Quantity, type, location, and instructions for use of fire extinguishing equipment;

(xvi) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system;

(xvii) Detailed procedures for reporting and initial containment of oil discharges;

(xviii) A brief summary of applicable federal, state, and local oil pollution laws and regulations;

(xix) A description of the training and qualification program for persons in charge;

(xx) A discussion of facility operation procedures for conducting oil transfers including transfer startups and shutdowns;

(xxi) Recordkeeping procedures and sample forms to be used;

(xxii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance replacement criteria for transfer pipelines, pumps and valves;

(xxiii) A section in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10 which requires that written procedures be developed to describe overfill prevention procedures. Overfill prevention procedures must be described for transfers to storage tanks and tank vessels; and

(xxiv) Detailed procedures for emergencies.

#### NEW SECTION

**WAC 173-180-425 Class 1 facility—Operations manual submittal.** (1) The owner or operator of an existing facility must submit the operations manual to ecology within ninety calendar days from the effective date of this chapter.

(a) Existing Class 1 facilities that have an ecology approved operations manual, on the date this chapter becomes effective, may submit only the new changes to the operations manual instead of resubmitting the entire operations manual.

(b) For Class 1 facilities that begin operations after the effective date of this chapter, the owner or operator must submit an operations manual to ecology at least one hundred twenty calendar days prior to conducting an oil transfer operation.

(2) One paper and one electronic copy of the operations manual and appendices must be delivered to:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Operations Manual  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Operations Manual  
300 Desmond Drive  
Lacey, WA 98503

(3) The operations manual submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

#### NEW SECTION

**WAC 173-180-430 Class 1 facility—Operations manual review and approval.** (1) Upon receipt of an operations manual, ecology will determine whether the operations manual is complete. If ecology determines that an operations manual is incomplete, ecology must notify the facility of the deficiencies.

(2) When reviewing operations manuals ecology must consider the following:

(a) The ability of the operations manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;

(b) The volume and type of oil(s) addressed by the facility operations manual;

(c) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;

(d) Inspection reports;

(e) The presence of operating hazards;

(f) The sensitivity and value of natural resources within the geographic area covered by the operations manual; and

(g) Any pertinent local, state, federal agency, public comments received on the operations manual.

(3) Ecology must endeavor to notify the facility owner or operator within five working days after completing the review whether ecology approves the operations manual.

(4) If the operations manual receives approval, ecology must send the Class 1 facility owner or operator an approval letter describing the terms of approval, including an expiration date.

(5) Conditional approval:

(a) Ecology may approve an operations manual conditionally by requiring a facility owner or operator to operate with specific precautionary measures until acceptable components of the operations manual are resubmitted and approved by ecology.

(b) Precautionary measures may include, but are not limited to:

(i) Reducing oil transfer rates;

(ii) Increasing personnel levels;

(iii) Restricting operations to daylight hours; or

(iv) Additional requirements to ensure availability to response equipment.

(6) After receiving notification of conditional status from ecology, a Class 1 facility must submit and implement required changes to ecology within thirty days. Ecology may issue an extension at ecology's discretion. Operations manual holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(7) If the operations manual approval is denied, ecology must send an explanation of the factors for disapproval and a list of deficiencies to the Class 1 facility owner or operator.

(a) The owner or operator of the facility must resubmit the operations manual within ninety calendar days of notifi-

cation of reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(b) The facility must not continue oil storage, transfer, production, or other operations until ecology approves an operations manual for that facility.

(8) Approval of a manual by ecology does not constitute an express assurance regarding the adequacy of the operations manual nor constitute a defense to liability imposed under state law.

(9) A facility may conduct operations if the facility properly submitted an operations manual to ecology and ecology has not provided the facility with a formal response.

#### NEW SECTION

**WAC 173-180-435 Class 1 facility—Operations manual updates.** (1) The owner or operator must notify ecology in writing prior to any significant changes to the operations manual that could affect implementation of the operations manual.

(2) A significant change includes, but is not limited to:

(a) A change in the owner or operator of the facility;

(b) A change in the types of oil handled at the facility;

(c) A substantial change in the facility's oil-handling capacity;

(d) Noncompliance with the federal Oil Pollution Act of 1990;

(e) A substantial change in oil spill prevention technology installed at the facility, or other substantial changes to facility technology, operations, or personnel procedures based on requirements of amended or new rules adopted by ecology; and

(f) Any other changes that would require modification of the operations manual.

(3) If a significant change will reduce the facility's ability to implement the operations manual, the operations manual holder must also provide a schedule for the return of the operations manual to full implementation capability.

(4) The facility may submit a facsimile to provide written notice for the purposes of this section.

(5) If ecology finds, because of the significant change, the operations manual no longer meets approval criteria, ecology may, at its discretion, place conditions on approval, or revoke approval. Ecology may also require the operations manual holder to amend its operations manual to incorporate the change.

(6) Within thirty calendar days of making a significant change to the operations manual, the facility owner or operator must distribute the amended page(s) of the operations manual to ecology and other operations manual holders.

(7) Ecology may review an operations manual and require changes following any spill, inspection, or drill for which the operations manual holder is responsible.

#### NEW SECTION

**WAC 173-180-440 Class 1 facility—Submitting the operations manual for reapproval.** (1) Ecology must review facility manuals every five years.

(2) The Class 1 facility must submit the operations manuals for reapproval unless the operations manual holder sub-

mits a letter requesting that ecology review the operations manual already in ecology's possession.

The operations manual holder must submit the operations manual or such letter at least one hundred eighty calendar days in advance of the operations manual expiration date.

#### NEW SECTION

**WAC 173-180-445 Class 2 facility—Operations manual.** (1) Each facility must keep the operations manual immediately accessible at the transfer location.

(2) Facilities must ensure that all employees involved in oil transfer operations are familiar with the operations manual provisions through regular and new employee training.

#### NEW SECTION

**WAC 173-180-450 Class 2 facility—Operations manual preparation.** (1) Each Class 2 facility must prepare an operations manual that meets the requirements of this chapter.

(2) The Class 2 facility may submit their Coast Guard operations manuals required under 33 CFR 154.300 to satisfy operations manual requirements under this chapter if:

(a) Ecology deems that such federal requirements equal or exceed those of ecology; or

(b) The Class 2 facility modifies or appends the operations manual to satisfy operations manual requirements under this chapter.

#### NEW SECTION

**WAC 173-180-455 Class 2 facility—Operations manual format requirements.** Operations manuals must:

(1) Have a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures;

Where applicable, topics identified in the table of contents may be cross referenced with other submissions required by chapter 90.56 RCW including contingency and prevention plans, or 33 CFR 156 provided that a copy of the *Coast Guard Operations Manual* has been submitted to ecology.

(2) Allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire operations manual; and

(3) Have a log sheet to record amendments to the operations manual. The log sheet must:

(a) Be placed at the front of the operations manual;

(b) Provide for a record of the section amended, the date that the old section was replaced with the amended section, and the initials of the individual making the change;

(c) Include a description of the amendment; and

(d) Include a description of the amendment's purpose or filed in the form of an amendment letter immediately following the log sheet.

#### NEW SECTION

**WAC 173-180-460 Class 2 facility—Operations manual content requirements.** (1) The operations manual must

describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.

(2) Operations manuals must address at a minimum the following topics for oil transfer operations from Class 2 facilities:

(a) Each operations manual submitted to ecology must contain a submittal agreement which:

(i) Includes the name, address, and phone number of the submitting party.

(ii) Verifies acceptance of the operations manual by the owner or operator of the Class 2 facility by either signature of the owner or operator or signature by a person with the authority to bind the corporation which owns such facility.

(iii) Commits execution of the operations manual by the owner or operator of the Class 2 facility, and verifies authority for the operations manual holder to make appropriate expenditures in order to execute operations manual provisions; and

(iv) Includes the name and location for the base of operations for the mobile fleet, and the name and location of the maintenance yard for rolling stock, and the starting date of operations.

(b) General Information related to the facility including:

(i) A brief summary of applicable federal, state, and local oil or hazardous material pollution laws and regulations;

(ii) A physical description of the fleet of mobile vehicles or rolling stock including capabilities;

(iii) Instructions in the use of each communication system;

(iv) A description and instructions for the use of drip and release containment for all hose connections;

(v) The maximum allowable working pressure (MAWP) of each hose assembly required to be tested by 33 CFR 156.170 of this chapter, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system, if any;

(vi) Recordkeeping procedures and sample oil transfer forms which are associated with the requirements in this chapter;

(vii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for hose assemblies, pumps and valves; and

(viii) Written procedures to describe vessel overfill prevention procedures in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10.

(c) Facility procedures for oil transfers to or from non-recreational vessels including:

(i) Detailed procedures for transferring oil which will include, at a minimum:

(A) Number of truck/trailer combinations needed;

(B) Transferring oil, including startup, topping off, and shutdown; and

(C) Shift-change procedures;

(ii) A discussion of equipment and procedures required for all vessels which receive oil from the Class 2 facility and

procedures for verifying that vessels meet Class 2 facility requirements and operations manual procedures;

(iii) A discussion regarding the time/condition constraints for deliveries;

(iv) Provide a copy of the MSDS for each type of oil transferred. The MSDS must be in the driver's possession or available at the transfer;

(v) A discussion of the minimum number of persons or equipment required to perform transfer operations and their duties;

(vi) Quantity, types, locations, and instructions for use of monitoring devices;

(vii) If applicable, procedures for shielding portable lighting;

(viii) Procedures for detecting leaks during oil transfer operations; and

(ix) Discussion of the facility's requirements regarding weather and sea conditions at the facility which may impact oil transfers to or from vessels including, at a minimum:

(A) Monitoring current weather and sea conditions;

(B) Monitoring forecasted weather and sea;

(C) Procedures for communicating weather and sea conditions to the PICs at regular intervals;

(D) Threshold values for weather and sea conditions above which transfer operations must cease; and

(E) Procedures for shutting down the oil transfer should weather or seas exceed threshold values.

(d) Class 2 facility emergency information, must include at a minimum:

(i) Procedures for reporting and initial containment of oil discharges;

(ii) The name and telephone number of the driver's supervisor or dispatcher and telephone number of the Coast Guard, state, local, and other personnel who may be called by the employees of the Class 2 facility in an emergency;

(iii) Emergency plans and procedures including a description of and location of each emergency shutdown system;

(iv) Quantity, type, location, and instructions for use of fire extinguishing equipment;

(v) Means of protecting nearby surface water from impact of discharge of oil, i.e., permanent or temporary drainage structures or devices to protect water at delivery site.

(e) If a Class 2 facility conducts Rate A transfers, then the operations manual must include threshold values when a facility cannot preboom under WAC 173-180-220 and data supporting this decision for a specific transfer location. These values and the supporting description must include at a minimum site specific information:

(i) Personnel safety;

(ii) Sea state;

(iii) Current velocity;

(iv) Wind speed; and

(v) Other environmental conditions.

#### NEW SECTION

**WAC 173-180-465 Class 2 facility—Operations manual submittal.** (1) All existing Class 2 facilities must submit

an operations manual to ecology within ninety calendar days after the effective date of this chapter.

(2) All Class 2 facilities that begin oil transfer operations after the effective date of this chapter must submit an operations manual to ecology at least ninety calendar days prior to the beginning of oil transfer operations.

(3) One paper and one electronic copy of the operations manual and appendices must be delivered to:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Operations Manual  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Operations Manual  
300 Desmond Drive  
Lacey, WA 98503

(4) The operations manual submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

#### NEW SECTION

**WAC 173-180-470 Class 2 facility—Operations manual review and approval.** (1) Upon receipt of an operations manual, ecology will determine whether the operations manual is complete. If ecology determines that an operations manual is incomplete, ecology must notify the Class 2 facility of the deficiencies.

(2) When reviewing operations manuals for approval ecology must consider the following criteria:

(a) The ability of the operations manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;

(b) The volume and type of oil(s);

(c) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;

(d) Inspection reports;

(e) The presence of operating hazards; and

(f) The sensitivity and value of natural resources within the geographic area covered by the operations manual.

(3) Ecology must endeavor to notify the facility owner or operator within five working days after completing the review whether or not ecology approves the operations manual.

(4) If the operations manual receives approval, ecology must send the Class 2 facility owner or operator an approval letter describing the terms of approval, including an expiration date.

(5) Conditional approval:

(a) Ecology may approve an operations manual conditionally by requiring a facility owner or operator to operate with specific precautionary measures until acceptable components of the operations manual are resubmitted and approved.

(b) Precautionary measures may include, but are not limited to:

- (i) Reducing oil transfer rates;
- (ii) Increasing personnel levels;
- (iii) Restricting oil transfer operations to daylight hours;

or

(iv) Additional requirements to ensure availability to response equipment.

(6) After receiving notification of conditional status from ecology, a Class 2 facility must submit and implement required changes to ecology within thirty days. Ecology may issue an extension at ecology's discretion. Operations manual holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(7) If operations manual approval is denied, ecology must send the facility owner or operator an explanation of the factors for disapproval and a list of deficiencies.

(a) The owner or operator of the facility must resubmit the operations manual within ninety calendar days of notification of reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(b) The facility must not continue oil transfer or other operations until an operations manual for that facility has been approved.

#### NEW SECTION

**WAC 173-180-475 Class 2 facility—Operations manual updates.** (1) The owner or operator must notify ecology in writing prior to any significant changes to the operations manual that could affect implementation of the operations manual.

(2) A significant change includes, but is not limited to:

- (a) A change in the owner or operator of the facility;
- (b) A change in the types of oil handled at the facility;
- (c) A substantial change in the facility's oil-handling capacity;

(d) Noncompliance with the federal Oil Pollution Act of 1990;

(e) A substantial change in equipment in use by the facility, or other substantial changes to facility technology, operations, or personnel procedures based on requirements of amended or new rules adopted by ecology; and

(f) Any other changes that would require that the operations manual be modified.

(3) If the significant change will reduce the facility's ability to implement the operations manual, the operations manual holder must also provide a schedule for the return of the operations manual to full implementation capability.

(4) The facility may submit a facsimile to provide written notice for the purposes of this section.

(5) If ecology finds, as a result of the significant change, the operations manual no longer meets approval criteria, ecology may, at its discretion, place conditions on approval, or revoke approval. Ecology may also require the operations manual holder to amend its operations manual to incorporate the change.

(6) Within thirty calendar days of making a change to the operations manual, the facility owner or operator must dis-

tribute the amended page(s) of the operations manual to ecology and other operations manual holders.

(7) Ecology must review operations manuals every five years.

(a) Operations manuals must be submitted for reapproval unless the operations manual holder submits a letter requesting that ecology review the operations manual already in ecology's possession.

(b) The operations manual holder must submit the operations manual or such letter at least one hundred eighty calendar days in advance of the operations manual expiration date.

(8) Ecology may review an operations manual and require changes following any spill, inspection, or drill for which the operations manual holder is responsible.

### **PART E: TRAINING AND CERTIFICATION FOR CLASS 1 AND CLASS 2 FACILITIES**

#### NEW SECTION

**WAC 173-180-500 Applicability of Part E.** (1) Part E applies to Class 1 and 2 facilities. All Class 1 and Class 2 facilities must have training and certification programs that are developed, approved, and implemented, pursuant to requirements in this chapter.

(2) Class 3 facilities must meet the training requirements in 33 CFR 154.

(3) Class 4 facilities must meet the training requirements in WAC 173-180-210(2).

#### NEW SECTION

**WAC 173-180-510 Class 1 facility—Training requirements.** (1) Each Class 1 facility must develop and implement oil transfer training for key supervisory, operations, maintenance, management, and indirect operations personnel identified pursuant to subsection (3) of this section.

(a) The Class 1 facility must design a training program, to the maximum extent practicable, to promote job competency and environmental awareness for the purpose of preventing oil spills.

(b) Non-English speaking personnel subject to the facility's training requirements must be trained in a manner that allows comprehension by such personnel.

(2) Oil transfer training programs must be approved by ecology under WAC 173-180-525.

(3) The Class 1 facility must identify, in writing, the specific position titles which the facility has identified to be subject to its oil transfer training requirements. In making this determination, the facility must evaluate the functions of facility personnel positions using the following definitions:

(a) "Key" means a position with direct responsibility for performing or overseeing the transfer, storage, handling, or monitoring of oil at a facility, or a job function where typical human factors present the probability of a spill occurring.

(b) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes but is not limited to the

person-in-charge, storage tank operators, pipeline operators, and oil transfer monitors.

(c) "Supervisory" means involvement in directly supervising the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state

(d) "Maintenance" means direct involvement in maintaining and repairing the equipment used for the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state.

(e) "Indirect operations" means involvement in on-site activities, such as new construction, in a capacity that indirectly involves the risk of an oil spill to waters of the state due to potential impacts to nearby oil-handling operations (e.g., operating digging equipment next to an active transfer pipeline). For cases where certain job titles associated with indirect operations can not be identified in advance, the facility must identify the types of job orders or work sites which may involve the need for indirect operations oil transfer training.

(4) The facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours that are appropriate for each position given the facility's training needs and human factor risks.

For the purposes of this section, "human factors" means human conditions, such as inadequate knowledge or fatigue, which can lead to incompetency or poor judgment, and "human factor risks" means risks of causing an oil spill due to the effects of human factors on competency and judgment.

(5) Operations and supervisory personnel training: Requirements for training of operations and supervisory personnel must focus on building personnel competency in operating procedures and spill prevention systems specific to the facility. Oil transfer training requirements must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;

(b) Overview of vessel transfer and spill containment systems including, but not limited to: Manifolds, valving, scuppers, and overflow alarm systems;

(c) Operating procedures and checklists specific to trainee's job function;

(d) Problem assessment, including recognition of human factor risks and how they can be minimized;

(e) Awareness of preventative maintenance procedures;

(f) Awareness of local environmental sensitivity and oil spill impacts;

(g) Major components of facility's oil spill prevention plan;

(h) Major components of facility's operations manual;

(i) Major components of facility's oil spill contingency plan;

(j) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(k) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(l) Routine and emergency communications procedures;

(m) Overview of applicable oil spill prevention and response laws and regulations; and

(n) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(6) Management personnel training: Requirements for initial oil transfer training of management personnel must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;

(b) Management role in operations and oil spill prevention;

(c) Recognition of human factor risks and how they can be minimized;

(d) Awareness of local environmental sensitivity and oil spill impacts;

(e) Major components of facility's oil spill prevention plan;

(f) Major components of facility's operations manual;

(g) Major components of facility's oil spill contingency plan;

(h) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(i) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(j) Overview of applicable oil spill prevention and response laws and regulations; and

(k) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(7) Maintenance personnel training: Requirements for initial oil transfer training of maintenance personnel must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at applicable maintenance work sites within the facility;

(b) Equipment problem assessment and preventative maintenance procedures;

(c) Awareness of local environmental sensitivity and oil spill impacts;

(d) Major components of facility's oil spill prevention plan;

(e) Major components of facility's operations manual;

(f) Major components of facility's oil spill contingency plan;

(g) Emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(h) Overview of applicable oil spill prevention and response laws and regulations; and

(i) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(8) Indirect operations personnel training: Requirements for initial oil transfer training of indirect operations personnel must incorporate the following training topics at a minimum:

(a) Overview of oil handling, transfer, storage, and monitoring/leak detection operations at specific indirect operations work site within the facility;

(b) Awareness of local environmental sensitivity and oil spill impacts;

(c) Notification procedures for emergency spill prevention actions; and

(d) For facility employees, drug and alcohol use awareness, pursuant to WAC 173-180-630.

(9) Training topics identified in subsections (5) through (8) of this section, do not prescribe fixed subject titles for class outlines or training organization. Facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the applicable personnel training program.

(10) The facility must identify, in writing, the specific oil spill prevention continuing education requirements for each affected position, including minimum hours, which are appropriate given the facility's training needs and human factor risks. Ongoing training must occur at least annually, and at a minimum address:

(a) Any changes in the core topics identified in subsections (5) through (8) of this section, unless affected personnel have already been informed about the change after its occurrence;

(b) Refresher awareness training on environmental sensitivity and oil spill impacts;

(c) Review and analysis of oil spills which have occurred during the past year;

(d) Refresher training on emergency spill prevention procedures; and

(e) For key supervisory, operations, and management personnel, a practice exercise of the facility's procedures for preventing a spill during a particular abnormal operations event.

(11) Facilities are encouraged to apply or modify existing training programs required under federal Process Safety Management requirements (29 CFR 1910), Coast Guard person-in-charge requirements (33 CFR 154.710), and other federal/state training requirements in order to meet the above oil transfer training requirements.

(12) Existing personnel that have entered their current position prior to adoption of this chapter can be regarded as having met the facility's initial oil transfer training requirements if:

(a) The facility has documented that those personnel have received the required training in the past; or

(b) The facility attests in writing and in detail, how those personnel have had on-the-job training or other experience equivalent to the facility's initial training requirements including type and frequency of past training when known.

(13) Facilities must develop follow up remedial training for personnel clearly responsible for causing an oil spill while functioning in their position, unless such personnel no longer occupy a position identified under subsection (3) of this section.

(14) Contractors hired by the facility to perform key supervisory, operations, maintenance, management, or indirect operations functions, as identified by the facility under subsection (3) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility is responsible to validate that such contractors have met the facility's oil transfer training requirements before

they perform a key supervisory, operations, maintenance, management, or indirect operations function.

(15) Facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.

(16) Facilities must develop and maintain written oil transfer training materials, such as training manuals or checklists.

(17) Oil transfer training must be documented, and records must be kept at the facility in a central and accessible location for at least five years from the date of training completion.

#### NEW SECTION

**WAC 173-180-515 Class 1 facility—Certification program.** (1) Each Class 1 facility must develop and implement a program to certify that key supervisory and operations personnel identified pursuant to WAC 173-180-510 have met the facility's oil transfer training program requirements, and are competent to perform the operations or supervisory functions associated with their position. The facility is not required to certify personnel other than key supervisory and operations personnel. The certification program must be designed, to the maximum extent practicable, to ensure job competency and environmental awareness for the purpose of preventing oil spills.

(2) Certification programs must meet minimum criteria pursuant to WAC 173-180-520.

(3) Certification programs must be approved by ecology pursuant to WAC 173-180-525.

#### NEW SECTION

**WAC 173-180-520 Class 1 facility—Minimum criteria for certification programs.** (1) The Class 1 facility oil spill prevention certification program must address all key supervisory and operations personnel identified pursuant to WAC 173-180-510.

(2) The Class 1 facility must develop and maintain written certification procedures, including:

(a) Minimum competency requirements to achieve certification;

(b) The process to develop and test competency in key supervisory and operations personnel;

(c) The process to issue and track certificates; and

(d) Policies regarding loss or lack of certified status.

(3) The Class 1 facility must maintain a written certificate or other record for supervisory and operations personnel which have met the facility's certification requirements. This record must document:

(a) The certified individual's name and position;

(b) Types and hours of training completed;

(c) Name of trainer;

(d) Results of performance tests and evaluations; and

(e) Signatures of the trainee and trainer.

(4) The Class 1 facility must keep copies of certification records at the facility in a central and accessible location for at least five years from the date of certification.



(5) The Class 1 facility certification program must incorporate methods to evaluate and confirm job competency, including:

(a) A written examination, or oral examination documented in writing, which tests general knowledge about training topics identified under WAC 173-180-510, with an appropriate passing score established by the facility;

(b) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:

(i) Observation of performance of each oil handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and

(ii) Practice exercises involving procedures to prevent a spill during abnormal operations events.

(6) The Class 1 facility's program must only provide for certification of an individual who has:

(a) Met the facility's oil spill prevention initial training requirements tied to the individual's position, as developed pursuant to WAC 173-180-510; and

(b) Passed a competency evaluation developed under subsection (5) of this section.

(7) Recertification of personnel must occur at least once every three years, based on:

(a) Successful completion of continuing education requirements; and

(b) Satisfactory performance in a reevaluation of competency as developed under subsection (5) of this section.

#### NEW SECTION

**WAC 173-180-525 Class 1 facility—Training and certification program approval.** (1) Existing Class 1 facilities:

(a) Must modify their training and certification program to meet requirements in this chapter and must implement the program within ninety calendar days from the effective date of this chapter.

(b) Must train and certify all personnel under the facility's modified training and certification program within ninety calendar days of the effective date of this chapter.

(2) Class 1 facilities that begin operations after the effective date of this chapter:

(a) Must develop or modify their training and certification program to meet the requirements of this chapter and must implement the program within one hundred twenty calendar days prior to oil transfer operations.

(b) Must train and certify all personnel under the facility's training and certification program before any oil transfer operation occurs at the facility.

(3) All new facility employees with oil transfer duties must be trained and certified within ninety days from date of hire.

(4) Ecology must review the Class 1 facility's training and certification program after the date that facilities must meet rule criteria pursuant to subsection (1) or (2) of this section. This review must be accomplished by a general on-site inspection by ecology through evaluation of the Class 1 facility's training materials, testing records and certification records, and consultation with personnel.

(5) Ecology will notify Class 1 facilities regarding approval status within thirty calendar days from completing inspections performed under subsection (4) of this section.

(6) Class 1 facilities that do not receive approval will have ninety calendar days to address deficiencies in their training and certification program, with options for a time extension based on ecology's discretion. For those personnel that were trained or certified after the deadlines established in subsection (1) of this section but prior to program approval, retraining or recertification of such personnel due to changes required by ecology's approval process can be postponed until the next retraining or recertification cycle as established by the facility pursuant to this chapter.

(7) Training and certification program approval is valid for five years. Significant changes to the Class 1 facility's program must be documented through an update of the facility's prevention plan pursuant to chapter 173-180 WAC Part F requirements. Minor upgrades in training and certification programs, such as expansion of training hours or updates to testing materials, are not required to be submitted to ecology through a prevention plan update.

(8) Ecology may perform announced and unannounced inspections at facilities to verify compliance.

(9) A training and certification program must be approved if, in addition to meeting criteria in this section and WAC 173-180-520, the Class 1 facility demonstrates that when implemented, the facility can, to the maximum extent practicable:

(a) Provide protection from human factor oil spill risks identified in the risk analysis required by WAC 173-180-630;

(b) Minimize the likelihood that facility oil spills will occur and minimize the size and impacts of those facility oil spills which do occur;

(c) Provide effective oil transfer training to key supervisory, operations, maintenance, management, and indirect operations personnel;

(d) Ensure proper evaluation of job competency; and

(e) Provide an effective system to clearly document and track personnel training and certification.

(10) When reviewing programs, ecology must, in addition to the above criteria, consider the following at a minimum:

(a) The volume and type of oil(s) handled by the facility, and frequency of oil-handling operations;

(b) Number of facility personnel;

(c) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(d) Inspection reports;

(e) The presence of hazards unique to the facility, such as seismic activity or production processes; and

(f) The sensitivity and value of natural resources that could be affected by a spill from the facility.

(11) Ecology may approve a program with an expedited review as set out in this section if that program has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.

(12) If the program receives approval, the facility owner or operator must receive a certificate of approval describing

the terms of approval, including expiration dates pursuant to subsection (6) of this section.

(a) Ecology may conditionally approve a program by requiring a facility owner or operator to operate with specific precautionary measures until unacceptable components of the program are resubmitted and approved.

(b) Precautionary measures may include, but are not limited to:

- (i) Reducing oil transfer rates;
- (ii) Increasing personnel levels;
- (iii) Restricting operations to daylight hours or favorable weather conditions; or
- (iv) Additional requirements to ensure availability of response equipment.

(c) A facility must have thirty calendar days after ecology gives notification of conditional status to make the required changes, with the option for an extension at ecology's discretion. Facilities which fail to meet conditional requirements or make required changes in the time allowed must lose conditional approval status.

(i) If approval is denied or revoked, the facility owner or operator must receive an explanation of the factors for disapproval and a list of deficiencies. The facility may be subject to penalties identified in chapter 90.56 RCW.

(ii) Ecology's decisions under this chapter are reviewable in superior court.

(iii) Approval of a training and certification program by ecology does not constitute an express assurance regarding the adequacy of the program nor constitute a defense to liability imposed under state law.

(13) Ecology may review a program following any spill, inspection, or drill at the facility.

#### NEW SECTION

**WAC 173-180-530 Class 2 facility—Oil transfer training requirements.** (1) Each Class 2 facility must develop and implement oil transfer training for key supervisory and operations personnel identified pursuant to subsection (6) of this section.

(2) Class 2 facilities must design training, to the maximum extent practicable, to provide job competency for oil transfer operations.

(3) Class 2 facilities must train non-English speaking personnel subject to the facility's training requirements in a manner that allows comprehension by such personnel.

(4) Ecology must approve oil transfer training programs for Class 2 facilities pursuant to WAC 173-180-545.

(5) Class 2 facilities must develop and maintain written training materials, such as training manuals or checklists.

(6) The Class 2 facility must identify, in writing, the specific position titles at the facility which are subject to the facility's oil transfer training requirements. In making this determination, the facility must evaluate the functions of facility personnel positions using the following definitions:

(a) "Key" means a position with direct responsibility for performing or overseeing the transfer, storage, handling, or monitoring of oil at a facility, or a job function where typical human factors present the probability of a spill occurring.

(b) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes but is not limited to the person-in-charge, truck drivers and operators, and oil transfer monitors.

(c) "Supervisory" means involvement in directly supervising personnel engaged in the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state.

(7) The Class 2 facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours, which are appropriate for each position given the facility's training needs and human factor risks as defined in WAC 173-180-510(4).

(8) Key supervisory and operations personnel training: Training of key supervisory and operations personnel must focus on building personnel competency in operating procedures specific to the facility. Training requirements must at a minimum incorporate the following training topics:

(a) Overview of all oil handling, transfer, and monitoring operations at the facility;

(b) Overview of vessel transfer and spill containment systems including, but not limited to: Manifolds, valving, scuppers, and overfill alarm systems;

(c) Operating procedures and checklists specific to trainee's job function;

(d) Preventative maintenance procedures;

(e) Awareness of oil spill impacts;

(f) Major components of facility's operations manual;

(g) Major components of the facility's response plan;

(h) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(i) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(j) Routine and emergency communications procedures;

(k) Overview of applicable oil spill response laws and regulations; and

(l) Drug and alcohol use awareness.

(9) Training topics identified in this section, do not prescribe fixed subject titles for class outlines or training organization. Class 2 facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the oil transfer training program.

(10) Key supervisory and operations personnel must also attend a certified twenty-four-hour HAZWOPER training session.

(11) Continuing education training: The Class 2 facility must have continuing education requirements for key supervisory and operations personnel. Ongoing training must occur at least annually, and at a minimum address:

(a) Review and analyze oil spills for causal factors which have occurred during the past year including lessons learned;

(b) Refresher eight-hour HAZWOPER training session;

(c) Refresher training on emergency spill prevention procedures; and

(d) Refresher training on spill cleanup and recovery operations.

(12) Existing personnel that have entered their current position prior to adoption of this chapter can be regarded as having met the facility's oil transfer training requirements if:

(a) The facility has documented that those personnel have received the required training in the past; or

(b) The facility provides documentation demonstrating how those personnel meet the requirements of this section.

(13) Class 2 facilities must provide follow-up training after any spill to all key supervisory and operations personnel. The training must address the causes of the spill and must be incorporated into the continuing education training program.

(14) Contractors hired by the facility to perform key supervisory and operations functions, as identified by the facility under subsection (6) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility is responsible to validate contractors have met the facility's oil transfer training requirements before they perform a key supervisory and operations functions.

(15) Class 2 facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.

(16) Facilities must develop and maintain written oil transfer training materials, such as training manuals or checklists.

#### NEW SECTION

**WAC 173-180-535 Class 2 facility—Certification program.** (1) Each Class 2 facility must develop and implement a certification program to certify key supervisory and operations personnel identified pursuant to WAC 173-180-530 to ensure they are competent to perform oil transfer duties.

(2) The certification program must be designed, to the maximum extent practicable, to ensure job competency for oil transfer operations.

(3) Certification programs must be approved by ecology pursuant to WAC 173-180-545.

(4) Certification programs must contain the minimum requirements in WAC 173-180-550.

#### NEW SECTION

**WAC 173-180-540 Class 2 facility—Certification of personnel.** (1) A Class 2 facility can only certify personnel under this program who:

(a) Are in key supervisory or operations positions at the facility;

(b) Have met the facility's oil transfer training requirements tied to the individual's position, (WAC 173-180-530); and

(c) Have passed a competency evaluation (WAC 173-180-550).

(2) Initial certification:

(a) For all Class 2 facilities operating on or before the effective date of this chapter:

(i) The facility must develop or modify their training and certification program to meet the requirements in this chapter and implement the program within ninety days of the effective date of this chapter.

(ii) Within ninety days from the effective date of this chapter, the Class 2 facility must have all key supervisory and operations personnel trained and certified in the program developed under this chapter.

(b) For all Class 2 facilities that begin operating after the effective date of this chapter:

(i) The facility must develop and implement their training and certification program before the first oil transfer operation.

(ii) Within ninety calendar days before the first oil transfer operation the Class 2 facility must train and certify all key supervisory and operations personnel.

(c) All new facility employees with oil transfer duties must be trained and certified within ninety days from date of hire.

(3) Recertification. Recertification of personnel must occur at least once every three years. To be recertified personnel must:

(a) Successfully complete the facility's continuing education requirements; and

(b) Repass the facility's competency evaluation (WAC 173-180-550).

#### NEW SECTION

**WAC 173-180-545 Class 2 facility—Program approval.** (1) Ecology must approve all training and certification programs.

(2) Class 2 facilities operating on the effective date of this chapter:

(a) Must develop or modify their training and certification program to meet the requirements in this chapter and implement the program within ninety calendar days of the effective date of this chapter.

(b) Must train and certify all key supervisory and operations personnel under the facility's training and certification program within ninety calendar days from the effective date of this chapter.

(3) Class 2 facilities that begin conducting oil transfer operations after the effective date of this chapter:

(a) Must develop and implement their training and certification program within ninety days prior to the first oil transfer operation.

(b) Must train and certify all key supervisory and operations personnel within ninety days after the first oil transfer operation.

(4) To receive approval ecology will conduct an on-site evaluation of the facility's training materials, testing and certification records, and consult with personnel.

(5) Ecology will notify Class 2 facilities regarding approval status within thirty calendar days from completing the evaluation under subsection (4) of this section.

(6) Class 2 facilities that do not receive approval will have ninety calendar days to address deficiencies in their

training and certification program. Ecology may grant an extension at ecology's discretion.

(7) For those personnel trained or certified after the deadlines established in subsections (2) and (3) of this section but before ecology approval, retraining or recertification can be postponed until the next retraining or recertification cycle as established by the facility.

(8) Training and certification program approval is valid for five years.

The facility must document changes to the facility's program and make the documentation available to ecology upon request.

(9) Ecology may perform announced and unannounced inspections at facilities to verify compliance.

(10) When evaluating programs for Class 2 facilities, ecology must consider the following at a minimum:

(a) The requirements in WAC 173-180-530 and 173-180-550;

(b) The volume and type of oil(s) handled by the facility, and frequency of oil-handling operations;

(c) Number of facility personnel;

(d) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators; and

(e) Inspection reports.

(11) If approved, ecology will send a certificate of approval to the Class 2 facility. The certificate will include the terms of approval, including expiration dates pursuant to subsection (6) of this section.

(12) Ecology may conditionally approve a training and certification program by requiring a Class 2 facility owner or operator to operate with specific precautionary measures until unacceptable components of the program are resubmitted and approved.

(13) A Class 2 facility must have thirty calendar days after ecology gives notification of conditional status to make the required changes, with the option for an extension at ecology's discretion. Facilities which fail to meet conditional requirements or make required changes in the time allowed must lose conditional approval status.

(14) If approval is denied or revoked, ecology must send the Class 2 facility owner or operator an explanation of the factors for disapproval and a list of deficiencies. The facility may be subject to penalties identified in chapter 90.56 RCW.

(15) Approval of a training and certification program by ecology does not constitute an express assurance regarding the adequacy of the program nor constitute a defense to liability imposed under state law.

(16) Ecology may review the facility's training and certification program following any spill, inspection, or drill at the Class 2 facility.

#### NEW SECTION

**WAC 173-180-550 Class 2 facility—Minimum requirements for a certification program.** The Class 2 facility certification program must have, at a minimum the following contents:

(1) Documentation of a training program developed to meet the requirements in this chapter.

(2) Written certification procedures, including:

(a) Minimum competency requirements to achieve certification;

(b) The process to evaluate and confirm job competency for key supervisory and operations personnel that must incorporate methods to evaluate and confirm job competency, including:

(i) Written examinations, or oral examinations documented in writing, which test general knowledge about training topics identified under WAC 173-180-530, with an appropriate passing score established by the facility;

(ii) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:

(A) Observation of performance of each oil-handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and

(B) Practice exercises involving procedures to prevent a spill during abnormal operations events;

(c) The Class 2 facility must maintain written records for key supervisory and operations personnel, which have met the facility's certification requirements. These records must document:

(i) The certified individual's name and position;

(ii) Types and hours of training completed;

(iii) Name of training course and signature of the trainer upon completion of the course;

(iv) Results of performance tests and evaluations; and

(v) Copy of certificate demonstrating the individual is certified;

(d) The process to issue and track certificates confirming certification.

All certified personnel must carry a proof of certification during oil transfer operations;

(e) Company policies regarding how the facility will manage key supervisory or operations personnel who lose or lack certification.

#### **PART F: PREVENTION PLANS FOR CLASS 1 FACILITIES**

##### NEW SECTION

**WAC 173-180-600 Applicability of Part F.** Part F only applies to Class 1 Facilities. Ecology has not adopted prevention plan requirements for Class 2, 3, or 4 facilities.

##### NEW SECTION

**WAC 173-180-610 Plan preparation.** (1) Each onshore and offshore facility must prepare a plan for prevention of oil spills from the facility into the waters of the state, and for the protection of fisheries and wildlife, other natural resources, and public or private property from oil spills.

(2) Plans must be thorough and contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of this chapter.

(3) Spill prevention countermeasure and control plans, operation manuals, and other prevention documents which

meet federal requirements under 33 CFR 154, 33 CFR 156, 40 CFR 109, 40 CFR 112, or the Federal Oil Pollution Act of 1990 may be submitted to satisfy plan requirements under this chapter if ecology deems that such federal requirements equal or exceed those of ecology, or if the plans are modified or appended to satisfy plan requirements under this chapter.

(4) Plans which meet requirements of other states may be submitted to satisfy plan requirements under this chapter if ecology deems that such state requirements equal or exceed those of ecology, or if the plans are modified or appended to satisfy plan requirements under this chapter.

(5) Prevention plans may be combined with contingency plans required by chapter 173-182 WAC.

(6) Plans, when implemented, must be designed to be capable of providing the best achievable protection from damages caused by the discharge of oil into the waters of the state. At a minimum, plans must meet the criteria specified in this chapter.

#### NEW SECTION

##### **WAC 173-180-620 Plan format requirements.** (1)

Plans must be organized in a format which provides easy access to prevention information. Plans must be divided into a system of chapters and sections. Chapters and sections must be numbered and identified with a system of index tabs.

(2) Plans must be formatted to allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire plan.

(3) If combined with a contingency plan, the prevention plan must be clearly separated from contingency plan elements.

(4) Prevention plan content requirements specified in WAC 173-180-630 are presented in suggested but not requisite order.

(5) Computerized plans, in addition to a hard copy, may be submitted to ecology.

#### NEW SECTION

##### **WAC 173-180-630 Plan content requirements.** (1)

Each plan must contain a submittal agreement which:

(a) Includes the name, address, and phone number of submitting party;

(b) Verifies acceptance of the plan by the owner or operator of the facility by either signature of the owner or operator or signature by a person with authority to bind the corporation which owns or operates the facility;

(c) Commits the owner or operator of the facility to execution of the plan, and verifies that the plan holder is authorized to make appropriate expenditures in order to execute plan provisions; and

(d) Includes the name, location, and address of the facility, type of facility, starting date of operations, types of oil(s) handled, and oil volume capacity.

(2) Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that ecology was notified of the amendment pursuant to WAC 173-180-670, and

the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Each plan must include a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures.

(4) Each plan must describe its purpose and scope, including, but not limited to:

(a) The onshore facility or offshore facility operations covered by the plan;

(b) The relationship of the prevention plan to other oil spill plans and operation manuals held by the facility;

(c) The relationship of the plan to all applicable local, state, regional, tribal, and federal government prevention plans, including the Washington statewide master oil and hazardous substance spill contingency plan; and

(d) Information required under facility oil spill contingency plan standards in chapter 173-182 WAC; spill prevention, countermeasure, and control plan standards in 40 CFR 112.4(a); or facility operations manual standards in 33 CFR 154.310(1-4) may be used to address (a) of this subsection.

(5) Each plan must describe the procedures and time periods for updating the plan and distributing the plan and updates to appropriate parties.

(6) Each plan must establish that the facility is in compliance with the Federal Oil Pollution Act of 1990. Within thirty calendar days after federal deadlines for facility requirements under that act, the plan must be updated to include any applicable evidence of compliance.

(7) Within thirty calendar days after evidence of financial responsibility is required by rules adopted by ecology pursuant to chapter 88.46 RCW, the plan must be updated to include any applicable evidence of compliance.

(8) Each plan must describe the types and frequency of spill prevention training provided to personnel.

(9) Each plan must provide evidence that the facility has an approved oil spill contingency plan or has submitted a contingency plan to ecology in accordance with standards and deadlines established by chapter 173-182 WAC.

(10) Each plan must address the facility's alcohol and drug use awareness and treatment program for all facility personnel.

(a) The plan must include at a minimum:

(i) Documentation of an alcohol and drug awareness program. The awareness program must provide training and information materials to all employees on recognition of alcohol and drug abuse; treatment opportunities, including opportunities under the Alcohol and Drug Addiction Treatment and Support Act pursuant to chapter 388-800 WAC; and applicable company policies;

(ii) A description of the facility's existing drug and alcohol treatment programs; and

(iii) A description of existing provisions for the screening of supervisory and key employees for alcohol and drug abuse and related work impairment.

(b) Evidence of conformance with applicable federal "Drug-Free Workplace" guidelines or other federal or state requirements may be used to address (a) of this subsection.

(11) Each plan must describe the facility's existing maintenance and inspection program.

(a) The description must summarize:

(i) Frequency and type of all regularly scheduled inspection and preventive maintenance procedures for tanks; pipelines; other key storage, transfer, or production equipment, including associated pumps, valves, and flanges; and over-pressure safety devices and other spill prevention equipment;

(ii) Integrity testing of storage tanks and pipelines, including but not limited to frequency; pressures used (including ratio of test pressure to maximum operating pressure, and duration of pressurization); means of identifying that a leak has occurred; and measures to reduce spill risk if test material is product;

(iii) External and internal corrosion detection and repair;

(iv) Damage criteria for equipment repair or replacement; and

(v) Any other aspect of the maintenance and inspection program.

(b) The plan must include a current index of maintenance and inspection records of the storage and transfer facilities and related equipment.

(c) Documentation required under 40 CFR 112.7(e) or 33 CFR 154 Subparts C and D may be used to address elements of this subsection.

(d) Existing copies of the facility's maintenance and inspection records for the five-year period prior to plan submittal must be maintained and must be available for inspection if requested by ecology. The plan must document the use of a system to maintain such records over a five-year period for subsequent activity.

(12) Each plan must describe spill prevention technology currently installed and in use, including:

(a) Tank and pipeline materials and design;

(b) Storage tank overflow alarms, low level alarms; tank overflow cut-off switches; automatic transfer shutdown systems; methods to alert operators; system accuracy; and tank fill margin remaining at time of alarm activation in terms of vertical distance, quantity of liquid, and time before overflow would occur at maximum pumping rate; documentation required under 40 CFR 112.7 (e)(2)(viii) or 33 CFR 154.310 (a)(12-13) may be used to address some or all of these elements;

(c) Leak detection systems for both active and nonactive pipeline conditions, including detection thresholds in terms of duration and percentage of pipeline flow; limitations on system performance due to normal pipeline events; and procedures for operator response to leak alarms;

(d) Documentation required under 40 CFR 112.7 (e)(3) may be used to address some or all of these elements;

(e) Rapid pump and valve shutdown procedures, including means of ensuring that surge and over-pressure conditions do not occur; rates of valve closure; sequence and time duration (average and maximum) for entire procedure; automatic and remote control capabilities; and displays of system status for operator use;

(f) Documentation required under 40 CFR 112.7 (e)(3) may be used to address some or all of these elements;

(g) Methods to minimize post-shutdown residual drain-out from pipes, including criteria for locating valves; identifi-

cation of all valves (including types and means of operation) that may be open during a transfer process; and any other techniques for reducing drain-out;

(h) Means of relieving pressure due to thermal expansion of liquid in pipes during quiescent periods;

(i) Secondary containment, including capacity, permeability, and material design;

(j) Documentation required under 40 CFR 112.7 (e)(1) and (2)(iii-iv) may be used to address some or all of these elements;

(k) Internal and external corrosion control coatings and monitoring;

(l) Storm water and other drainage retention, treatment, and discharge systems, including maximum storage capacities and identification of any applicable discharge permits;

(m) Documentation required under 40 CFR 112.7 (e)(1) and (2)(iii and ix) may be used to address some or all of these elements; and

(n) Criteria for suspension of operations while leak detection or other spill control systems are inoperative.

(13) Each plan must describe measures taken to ensure facility site security, including:

(a) Procedures to control and monitor facility access;

(b) Facility lighting (documentation required under 33 CFR 154.570 may be used to address some or all of this element);

(c) Signage; and

(d) Right of way identification or other measures to prevent third-party damage (documentation required under 40 CFR 112.7 (e)(3)(v) and (9) may be used to address some or all of this element).

(14) Each plan must list any discharges of oil in excess of twenty-five barrels (one thousand fifty gallons) to the land or waters of the state which occurred during the five-year period prior to the plan submittal date. For each discharge, the plan must describe:

(a) Quantity;

(b) Type of oil;

(c) Geographic location;

(d) Analysis of cause, including source(s) of discharged oil and contributing factors (e.g., third party human error, adverse weather, etc.); and

(e) Measures taken to remedy the cause and prevent a reoccurrence.

The period between July 1, 1987, and January 1, 1993, the facility must provide existing information regarding (a) through (e) of this subsection for such discharges, and must document the use of a system to record complete information for subsequent discharges.

(15) Each plan must include a detailed and comprehensive analysis of facility spill risks based on the information required in subsections (11) through (14) of this section, and other relevant information.

(a) The risk analysis must:

(i) Evaluate the construction, age, corrosion, inspection and maintenance, operation, and oil spill risk of the transfer, production, and storage systems in the facility, including piping, tanks, pumps, valves, and associated equipment;

(ii) Evaluate spill minimization and containment systems within the facility;

(iii) Be prepared under the supervision of (and bear the seal of) a licensed professional engineer or another individual which ecology has deemed to have an acceptable level of expertise.

(b) Documentation required under 40 CFR 112.7 (b) and (e) may be used to address some or all of the elements of this subsection.

(16) Each plan must describe how the facility will incorporate those measures that will provide best achievable protection to address the spill risks identified in the risk analysis required in subsection (15) of this section.

Information documented pursuant to 40 CFR 112.7(e) and 33 CFR 154.310 (a)(1-4) may be used to address some or all of these elements of this subsection.

(17) If the prevention plan is combined with a contingency plan, the prevention plan may incorporate information required in this section by reference if that information is provided in the contingency plan.

#### NEW SECTION

**WAC 173-180-640 Plan submittal.** (1) Any onshore or offshore facility that first begins operating after the deadlines stated in this subsection must submit a plan to ecology at least sixty-five calendar days prior to the beginning of operations.

(2) Three copies of the plan and appendices must be delivered to:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Prevention Plan Review  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
300 Desmond Drive  
Lacey, WA 98503

(3) Onshore and offshore facility plans may be submitted by:

(a) The facility owner or operator; or

(b) A primary response contractor approved by ecology pursuant to chapter 173-182 WAC in conformance with signature requirements under WAC 173-180-630(1).

(4) A single plan may be submitted for more than one facility, provided that the plan meets the requirements in this chapter for each facility listed.

(5) The plan submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

#### NEW SECTION

**WAC 173-180-650 Plan review.** (1) Ecology must endeavor to review each plan in sixty-five calendar days. If the plan is submitted in conjunction with a contingency plan required under chapter 173-182 WAC, ecology may extend the prevention plan review period an additional sixty-five calendar days. Upon receipt of a plan, ecology must evaluate promptly whether the plan is incomplete. If ecology deter-

mines that a plan is incomplete, the submitter must be notified of deficiencies. The review period will not begin until ecology receives a complete plan.

(2) Ecology must regularly notify interested parties of any prevention plans, which are under review by ecology, and make plans available for review by all ecology programs, other state, local, tribal, and federal agencies, and the public. Ecology must accept comments on the plan from any interested party during the first thirty calendar days of review by ecology.

(3) A plan must be approved if, in addition to meeting criteria in WAC 173-180-530, it demonstrates that when implemented, it can:

(a) Provide best achievable protection from damages caused by the discharge of oil into the waters of the state;

(b) Minimize the likelihood that facility oil spills will occur;

(c) Minimize the size and impacts of those facility oil spills which do occur; and

(d) After the adoption of facility operation standards by rule by ecology pursuant to RCW 90.56.220:

(i) Provide for compliance with prevention standards and deadlines established by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220; and

(ii) Provide, to the maximum extent practicable, protection from oil spill risk factors identified in the risk analysis required by WAC 173-180-630, for those risk factors not addressed by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220.

(4) When reviewing plans, ecology must, in addition to the above criteria, consider the following at a minimum:

(a) The volume and type of oil(s) addressed by the plan;

(b) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(c) Inspection reports;

(d) The presence of hazards unique to the facility, such as seismic activity or production processes;

(e) The sensitivity and value of natural resources within the geographic area covered by the plan; and

(f) Any pertinent local, state, tribal, federal agency, or public comments received on the plan.

(5) Ecology may approve a plan based upon an expedited review pursuant to criteria set out in this chapter, if that plan has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.

(6) Ecology must endeavor to notify the facility owner or operator within five working days after the review is completed whether the plan has been approved.

(a) If the plan receives approval, the facility owner or operator must receive a certificate of approval describing the terms of approval, including an expiration date.

(b) Ecology may conditionally approve a plan by requiring a facility owner or operator to operate with specific precautionary measures until unacceptable components of the plan are resubmitted and approved.

(i) Precautionary measures may include, but are not limited to, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours or favorable

weather conditions. Precautionary measures may also include additional requirements to ensure availability of response equipment.

(ii) A plan holder must have thirty calendar days after ecology gives notification of conditional status to submit to ecology and implement required changes, with the option for an extension at ecology's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(c) If plan approval is denied or revoked, the facility owner or operator must receive an explanation of the factors for disapproval and a list of deficiencies. The facility must not continue oil storage, transfer, production, or other operations until a plan for that facility has been approved.

(d) Ecology's decisions under this chapter are reviewable in superior court.

(e) If a plan holder demonstrates an inability to comply with an approved prevention plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(i) Place conditions on approval pursuant to (b) of this subsection; or

(ii) Revoke its approval pursuant to (c) of this subsection.

(f) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(7) Ecology must prepare a manual to aid ecology staff responsible for plan review. This manual must be made available to plan preparers. While the manual will be used as a tool to conduct review of a plan, ecology will not be bound by the contents of the manual.

(8) Ecology must work with the office of marine safety to ensure that no duplication of regulatory responsibilities occurs in the review of prevention plans from marine facilities.

#### NEW SECTION

**WAC 173-180-660 Plan maintenance and use.** (1) Each facility covered by the plan must conspicuously locate copies of the plan within the facility to ensure that a copy of the plan is immediately accessible to all facility personnel involved in supervising or implementing oil handling operations.

(2) Facilities must ensure that all employees involved in oil transfer, production, or storage operations are familiar with the plan provisions through regular training. Orientation materials for new employees involved in oil transfer, production, or storage operations must contain a copy of the plan.

#### NEW SECTION

**WAC 173-180-670 Plan update timeline.** (1) Ecology must be notified in writing as soon as possible and prior to completion of any significant change which could affect the plan. If the change will reduce the facility's ability to implement the plan, the plan holder must also provide a schedule for the return of the plan to full implementation capability.

(a) A significant change includes, but is not limited to:

(i) A change in the owner or operator of the facility;

(ii) A change in the types of oil handled at the facility;

(iii) A five percent or greater change in the facility's oil handling capacity;

(iv) Noncompliance with the Federal Oil Pollution Act of 1990;

(v) Noncompliance with state financial responsibility requirements developed under chapter 88.40 RCW; and

(vi) A substantial change in oil spill prevention technology installed at the facility, or other substantial changes to facility equipment, operations, personnel procedures, or any other change, including compliance with amended or new rules adopted by ecology, which substantially affects the level of risk described pursuant to WAC 173-180-630.

(b) Changes which are not considered significant include, but are not limited to, minor variations (less than five percent) in oil handling capacity, maintenance schedules, and operating procedures, provided that none of these changes will increase the risk of a spill.

(c) The facility must update the plan's list of discharges, as required by WAC 173-180-630, within thirty calendar days after an oil discharge by the facility in excess of twenty-five barrels (one thousand fifty gallons).

(d) A facsimile will be considered written notice for the purposes of this subsection.

(e) Failure to notify ecology of significant changes must be considered noncompliance with this chapter and subject to enforcement provisions of chapter 90.56 RCW.

(2) If ecology finds that, as a result of the change, the plan no longer meets approval criteria pursuant to WAC 173-180-650, ecology may, at its discretion, place conditions on approval or revoke approval in accordance with WAC 173-180-650. Ecology may also require the plan holder to amend its plan to incorporate the change.

(3) Within thirty calendar days of making a change to the prevention plan, the facility owner or operator must distribute the amended page(s) of the plan to ecology and other plan holders.

(4) Plans must be reviewed by ecology at least every five years pursuant to WAC 173-180-650. Plans must be submitted for reapproval unless the plan holder submits a letter requesting that ecology review the plan already in ecology's possession. The plan holder must submit the plan or such a letter at least sixty-five calendar days in advance of the plan expiration date.

(5) Ecology may review a plan following any spill at the facility.

### **PART G: OIL TRANSFER RESPONSE PLANS**

#### NEW SECTION

**WAC 173-180-700 Applicability of Part G.** Part G applies to Class 1 and 2 facilities. Ecology has not adopted oil transfer response plan requirements for Class 3 and 4 facilities.

#### NEW SECTION

**WAC 173-180-710 Class 1 facility—Contingency plans.** Class 1 facilities must have an approved contingency



plan as required in chapter 173-182 WAC contingency plan, drill program, and response contractor standards.

300 Desmond Drive  
Lacey, WA 98503

NEW SECTION

**WAC 173-180-720 Class 2 facility—Oil transfer response plans.** Class 2 facilities must have an approved oil transfer response plan (response plan) as required in Part G of this chapter.

NEW SECTION

**WAC 173-180-730 Class 2 facility—Contents of the oil transfer response plan (response plan).** (1) All Class 2 facilities that transfer oil to a nonrecreational vessel must prepare and submit to ecology an oil transfer response plan (response plan) that meets the requirements of 33 CFR Part 154, Subpart F.

(2) In addition to the requirements in subsection (1) of this section, all Class 2 facilities response plans must include all of the following:

- (a) A description of how the Class 2 facility meets the requirements in WAC 173-180-220;
- (b) The spill response contractor the facility lists in the response plan must also be a state approved primary response contractor under WAC 173-182-800;
- (c) A statement that the facility will participate in unannounced drills as described in Part H of this chapter;
- (d) A description of how the facility will meet the training exercise program in 33 CFR 154.1050 and 154.1055 as well as the drill requirements in WAC 173-180-810; and
- (e) A form the Class 2 facility must use to provide initial and follow-up spill notification as required in 33 CFR 154.1035 and includes notification information for state agencies as required in RCW 90.56.280.

NEW SECTION

**WAC 173-180-740 Class 2 facility—Response plan submittal.** (1) For a Class 2 facility that begins operations after the effective date of this chapter, the Class 2 facility must submit a response plan at least ninety days prior to conducting the first oil transfer operation to a nonrecreational vessel for that facility.

(2) For a Class 2 facility operating on the effective date of this chapter, must submit the response plan at least ninety days of the effective date of this chapter.

(3) The Class 2 facility owner or operator must deliver two paper copies and one electronic copy of the response plan to:

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Response Plan Review  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

The Department of Ecology  
Spill Prevention, Preparedness, and Response Program  
Response Plan Review

NEW SECTION

**WAC 173-180-750 Class 2 facility—Response plan review and approval.** (1) Upon receipt of the complete response plan ecology must review the response plan and then ecology will notify the Class 2 facility if ecology:

- (a) Approved the response plan.
  - (b) Found deficiencies in the response plan.
- (2) If ecology approves a response plan, ecology will send a letter indicating approval and will include an expiration date for the response plan.
- (3) If ecology finds deficiencies in the response plan, ecology may grant conditional approval of a response plan by requiring the facility to operate with specific precautionary measures until the facility submits acceptable provisions of the response plan and ecology approves the response plan.
- (4) If ecology grants conditional approval, ecology will:
- (a) Send notice to the facility describing the deficiencies;
  - (b) Provide the facility with a due date by which the facility must address the deficiencies; and
  - (c) Provide precautionary measures the facility must implement until ecology grants full approval of the response plan.
- (5) If a facility receives conditional approval, the Class 2 facility must submit and implement required changes to ecology within the due date, with the option for an extension at ecology's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.
- (6) Upon receiving the information required by conditional approval, ecology will complete the review.

NEW SECTION

**WAC 173-180-760 Class 2 facility—Response plan update and timeline.** (1) The facility is required to keep the response plan up-to-date with accurate information.

(2) Whenever changes are made to the response plan, two paper copies and one electronic of the changed sections must be submitted to ecology to be placed in the facility's plan on file at ecology.

(3) Ecology must review the facility's oil transfer response plan every five years.

- (a) The facility must submit two paper copies or one electronic copy of the response plan for reapproval; or
- (b) The facility may submit a letter to ask ecology to review the response plan that is currently on file at the agency.

(4) The facility must submit the response plan or letter at least ninety calendar days in advance of the expiration date of the response plan.

(5) Ecology may review and request changes to your response plan following any oil spill, inspection, or drill.

NEW SECTION

**WAC 173-180-770 Class 2 facility—Response plan maintenance and use.** The Class 2 facility must keep the

response plan at each transfer location as well as the primary place of business.

**PART H: DRILL PROGRAM**

NEW SECTION

**WAC 173-180-800 Applicability of Part H.** (1) Part H applies to Class 2 facilities only.

(2) Drill requirements for Class 1 facilities are in chapter 173-182 WAC.

NEW SECTION

**WAC 173-180-810 Type and frequency of unannounced drills.** In addition to the National Preparedness for Response Exercise Program, ecology may conduct the following unannounced drills at Class 2 facilities:

Type of Drill	Drill Expectations and Duration
Deployment drills	These drills may involve testing whether or not the facility can deploy personnel, boom, recovery, and storage equipment as described in WAC 173-180-215.
Notification and emergency shutdown procedure drills	These drills may involve testing the facility's ability to follow the notification in the response plan and emergency shutdown procedures described in the operations manual.

NEW SECTION

**WAC 173-180-820 Unannounced drills for Class 2 facilities.** (1) Ecology will evaluate these drills.

(2) At the start of the unannounced drill, ecology will notify the Class 2 facility of the drill objectives, expectations and scenario.

(3) The Class 2 facility may request to be excused from an unannounced deployment drill if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If ecology approves the request, ecology will call the drill on another date.

(4) Ecology will provide the facility with a drill evaluation. If deficiencies are found during the drill, ecology may require a redrill after the facility corrects the deficiencies.

**WSR 06-12-120**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 00-03—Filed June 7, 2006, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-05-096.

Title of Rule and Other Identifying Information: The department of ecology is proposing new chapter 173-182

WAC, Oil Spill Contingency Planning. This rule sets standards for vessel and facility:

- Oil spill contingency plans.
- Drills that test plans, and the
- Approval of primary response contractors.

Hearing Location(s): Columbia Basin College, Gjerde Center, 2600 North 20th Avenue, Pasco, WA 99301, (509) 547-0511 ext. 2240, on July 11, 2006, at 6:00 p.m.; at the Washington State University-Vancouver Campus, Student Services Building, Room 129-130, 14204 N.E. Salmon Creek Avenue, Vancouver, WA 98686, (360) 546-9588, on July 13, 2006, at 6:00 p.m.; at the City Council Chambers, Main Chamber Room, 321 East 5th Street, Port Angeles, WA 98362, (360) 457-0411, on July 15, 2006, at 4:00 p.m.; at the Hampton Inn, Fox Hall, 3985 Bennett Drive, Bellingham, WA 98225, (360) 676-7700, on July 18, 2006, at 6:00 p.m.; and at the Highline Community College, Building 7, 2400 South 240th, Des Moines, WA 98198, (206) 878-3710, on July 19, 2006, at 6:00 p.m.

Date of Intended Adoption: September 25, 2006.

Submit Written Comments to: Elin Storey, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail cplanrule@ecy.wa.gov, phone (425) 649-7111, fax (360) 407-7288, received by 5 p.m., on July 26, 2006.

Assistance for Persons with Disabilities: Contact Susanne McLemore by July 5, 2006, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of ecology spill prevention, preparedness and response program is creating a new chapter of rules for vessel and facility oil spill contingency plans. The existing rules are over ten years old and they:

- Require vessels, facilities, and pipelines to plan for worst case oil spills.
- Require plan holders to use state approved response contractors.
- Describe a program for drill exercises to test the plans.

The two existing chapters of rules, chapters 173-181 and 317-10 WAC, will be repealed at a later date.

Reasons Supporting Proposal: The rule updates are necessary in order to build on the last ten years of improvements in spill preparedness, and to move current guidance into rule to comply with the Supreme Court's *Hillis* decision.

Statutory Authority for Adoption: RCW 88.46.060, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.340, and ESSB 6244 as signed in 2006.

Statute Being Implemented: Chapters 90.56 and 88.46 RCW and modified by 2006 legislature (ESSB 6244).

Rule is necessary because of state court decision, 3/97 Washington state supreme court decision in *Hillis v. WA State Department of Ecology*.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Linda Pilkey-Jarvis, Olympia, Washington, (360) 407-7447; and Enforcement: Dale Jensen, Olympia, Washington, (360) 407-7452.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

*If you need this publication in an alternate format, please call spills program at (360) 407-7455. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341.*

**Introduction:** If more than minor costs are imposed by proposed rules on businesses, chapter 19.85 RCW requires that a small business economic impact statement (SBEIS) be completed. This SBEIS was done in compliance with this requirement.

The proposed chapter of rules has been reviewed and it has a disproportionate impact on small businesses. Cost minimizing features have been included in the rule development.

It should be noted that many, if not all, of the companies surveyed for this analysis and were treated as a small business in this study, are in reality large corporations with few or zero direct employees in Washington—In fact, ecology believes that only less than 6% of the respondents are actually small businesses, if we were able to obtain total American employment. The state applies a narrow definition of small business.

**Brief Description of Changes Affecting Small Businesses:** The primary impact from the proposed rules will be shifting from requirements that have been in guidance into these rules. Most small businesses answering the 2003-2004 survey of plan holders are in compliance with the guidance and should be able to comply with the new rules.

**The Baseline for Comparison:** The baseline for comparison for this analysis is the shift from the existing state and federal requirements to the proposed chapter of rules. The draft CBA contains an explanation of this reasoning.

**Changes in proposed rules:** The proposed rules are extensive and complex, though much of the language is similar to both the existing rules and the federal requirements. The sections of the rules that create a change from the baseline are described here. A more detailed description can be found in the cost benefit analysis available on line at [www.ecy.wa.gov/programs/spills/spills.html](http://www.ecy.wa.gov/programs/spills/spills.html).

**Contingency Planning:** The new rules provide some streamlining of plan requirements, for example ecology no longer requires a system for categorizing spills by size and type, scenarios for small and worst case spills. The rules capitalize on the regional planning efforts by allowing references to the northwest area contingency plan (NWACP) for environmental sensitivities [sensitivities] (GRPs), disposal plan, ICS job descriptions, ICS process, communications systems, and description of the relationships with other plans. The development of umbrella plans is encouraged; for example, a company with several facilities or multiple vessels can submit one plan and gain a savings in costs. Costs may be greater than the current rules with the new requirement that planholders submit yearly update or a letter to Ecology affirming no changes. Ecology believes this option would be a low cost feature for small businesses.

**Equipment Planning Standards:** As proposed, these standards either equal or exceed the federal contingency planning standards and address spill assessment, boom

requirements, recovery and storage of oily waste, in-situ burn and dispersants, shoreline cleanup, aerial observation, and availability of workboats to support spill response. The proposed requirements will result in resources staged closer to the coastal entrances to state waters, to be more adequately prepared for offshore spills. The proposed rules drop the performance standard from the planning standards. This is a cost savings from the existing guidance and WAC.

The proposed rules also address planning for ground water spills and spills along pipeline corridors. Most of the pipelines and tank farms were able to meet the two hour standard before the guidance changed to proposed rules.

The cost of the equipment for individual companies was difficult to estimate. No plan holder directly owns sufficient equipment to cover their worst case spill. There is a reliance on contracting for assistance. Ecology therefore calculated the cost by subtracting the share of equipment required by the federal program from the total equipment needed under the proposed rules. This state share was divide [divided] by the existing equipment to get a percentage share of equipment for each type of equipment (boom, recovery, and storage). That percentage is then multiplied times the value of each type of equipment in the proposed rules. The value of the equipment is based on the annualized value of each type of equipment taken from 2003-2004 survey data.

Table 1: Estimating the Weighted Share of Equipment Costs for the Proposed Rules

Equipment Basis for Shares	Boom	Removal	Storage	Weighted Share
Equipment Type Share of Cost	4.38%	38.05%	57.57%	
State Share of Total Capacity	35.29%	31.68%	56.89%	
State Share of Cost	1.55%	12.05%	32.75%	46.4%

The reported annualized cost of existing equipment required by the state is \$7 million. The reported total annualized cost of existing equipment is \$24 million. The existing equipment in the state exceeds the requirements of both federal and state requirements.

Those who own the equipment will charge plan holders with insufficient equipment for the right to claim access to the equipment in their plans. Therefore, the cost of the agreements, may reflect the cost of access to this equipment.

**Drills:** The proposed rules closely follows the existing guidance in most cases. The rules call for one tabletop drill per year and two deployments. Once in a three year period, one of the tabletops must be a worst case drill. Twice in a three year period, a deployment drill must include verifying or testing of a geographic response plan strategy. Unannounced drills are on an "as necessary" basis, and do not constitute an additional drill. The number of unannounced drills is expected to be two out of every three year cycle for most

plan holders. The scope and frequency of table top and deployment drills under the new rules is consistent with the federal requirements.

**Current ongoing costs:** Reported costs for drills required by the state were difficult to interpret. Some of the companies that have a small presence in Washington and must therefore be classified as small business, are in fact multinational corporations. They meet their drill requirements in other states. Thus much of the reported costs, especially for vessels, includes drills that were done out-of-state. It is unclear what share of the costs of out-of-state drills should accrue to the existing rules since the drills were intended to meet both the requirements of either the federal government or another state, and often not the requirements of Washington's rules. Some respondents reported the cost of doing unannounced drills that were not done in Washington and some reported doing many more drills than are required in Washington. Ecology has been unable to remove many of these issues, thus the drill costs are probably overstated.

**Expected changes in costs:** Most changes should be cost neutral. The largest cost change is created by dropping the requirement for a full scale unannounced deployment drill every year. Ecology expects that these will be focused drills, done for each company no more than two out of every three years. These drills are not common and the reporting on these costs was limited. These savings are prospective only. Ecology did not enforce the annual requirement for a full scale unannounced drill in the existing rules. However, it is the shift in the legal requirements that must be valued. Because they are not the norm, the data available on the cost of these drills is very limited. The estimated savings for vessel companies is \$45 thousand every third year or \$15 thousand per year. The estimated savings for facilities is \$11,000 every third year or \$3,700. The estimated savings for the response contractors ranges from \$3,000 (small response contractors) to \$18,000 (large response contractors) per drill. The response contractors report billing less than this to their plan holders, so these costs may be included elsewhere in the contract such as flat annual costs. An additional cost is imposed by an added limited deployment drill. These costs range from \$4,000 to \$8,000 per drill. These costs vary based on the company reporting. The net effect for most vessels and some large facilities is a net reduction in costs. Response contractors are mandated to assist with drills and therefore should also see cost reductions. There is an expected small reduction in total existing drilling costs.

**Training:** The new rules require that plan holders commit to the training of personnel to implement the plan. The plan must describe the type and frequency of training that each individual listed in the plan receives. The key difference between the existing and new rules are the inclusion of a list of specific training topics: Incident command system, northwest area contingency plan policies, use and location of geographic response plans, the contents of the plan and worker health and safety as appropriate. There is also a requirement that new employees complete the training program prior to being assigned job responsibilities which require participation in emergency response situations. The new rules also allow the inspection of training records.

Training costs under the current rules and current federal requirements are \$4 million per year. This training would be necessary for either the state or the federal requirements and are therefore not a direct cost of the proposed rules. However, given that a share of the equipment used is required by the state and given that the federal government requires training on all equipment, the training is prorated over to the state and federal requirements based on shares of equipment.

**Overhead and Other Costs:** Overhead costs such as insurance and indirect costs associated with management under the current rules and the federal requirements are \$3.4 million per year. This cost would be necessary for either the state or the federal requirements and should not change. They are therefore not a cost of the proposed rules.

**Comparison of Impacts to Small and Large Companies:** Small companies bear a disproportionate share of the costs. Ecology has measured the disproportionate impact to business based on total costs divided by the number of employees. The ratio was calculated for all small companies taken together and for all large companies taken together.

Ratio = Total cost for all companies/total employment for all companies.

Large employers pay nearly \$1000 per employee and small companies pay \$23,000 per employee. It should be noted here that the definition of a small company depends on the number of employees within Washington and that some of the companies treated as small companies are actually part of multinational corporations.

The primary difference for small and large employers is the fact that the larger companies have a substantial [substantial] investment in equipment and rely less on contracts and letters of agreement. Given this, the totals for each have been handled differently.

- Large companies have a great deal of equipment and include the large response contractors. The cost of equipment is largely borne by response contractors and then charged out to the plan holders. Therefore, for the large employers, the response contractors costs were not summed into the total, in order to avoid double counting.
- Small companies tend to rely heavily on the response contractors and following this same procedure would tend to create a biased impression of lower costs. Therefore, in this case the cost of equipment is not summed into the total in order to avoid double counting.

Note that much of the reported response contractors and letter of agreement cost for the small businesses is income on the large business side.

Table 2: Comparing Impacts to Large and Small Businesses

Large Employers		Small Employers	
Items	State Requirements	Items	State Requirements
Planning	\$ -	Planning	
Equipment Annualized	\$ 4,045,524	Equipment Annualized	\$ 536,804
PRC & Letter of Agreement	\$ 1,254,066	PRC & Letter of Agreement	\$ 3,175,078
Drill Costs	\$ (192,098)	Drill Costs	\$ (37,613)
Training	\$ 1,580,572	Training	\$ 117,535
Overhead	\$ -	Overhead	\$ -
Other Costs	\$ -	Other Costs	\$ -
Total: Net out PRC Overlap*	\$ 5,433,998	Total: Net out PRC Overlap*	\$ 3,255,000
Cost Per Employee	\$ 988	Cost Per Employee	\$ 23,167

The impact is disproportionate. The ratio of small business costs per employee to large business costs per employee is twenty-three. If the equipment/response contractors summation were treated the same way the ratio would still be four. Finally, if the data were analyzed for the two companies, which may be small based on total United States employment, and then the cost per employee for them would be \$8,000. This is still larger than the \$1000 per employee for the large companies and provides a ratio of \$8 to \$1.

**NAICS Codes Affected:** The plan holders have many different types of businesses, some of which only incidentally involve holding or transporting large quantities of chemicals or oil. The following NAICS codes have more than one entity in the state which will be affected by these proposed rules.

- 114100
- Fishing
- 324110
- Petroleum Refineries
- 325998
- All Other Miscellaneous Chemical Product and Preparation Manufacturing
- 422690
- Other Chemical and Allied Products Merchant Wholesalers
- 234910
- Oil and Gas Pipeline and Related Structures Construction
- 422710
- Petroleum Bulk Stations and Terminals
- 483111
- Deep Sea Freight Transportation
- 483112
- Deep Sea Passenger Transportation
- 483113
- Coastal and Great Lakes Freight Transportation
- 487210
- Scenic and Sightseeing Transportation, Water
- 483211
- Inland Water Freight Transportation

**Business Survey:** Ecology conducted a survey of affected businesses in late 2003 and early 2004. To some extent, these results may be out of date. For example, since the survey was conducted two of the large response contractors have merged and certain costs (such as overhead) reduced through efficiencies. Respondents are invited to

revise their earlier survey responses. The survey requested information on the following costs<sup>1</sup> for the SBEIS:

1. Reporting.
2. Record keeping.
3. Compliance costs.
4. Professional services that a small business is likely to need in order to comply.
5. Equipment.
6. Supplies.
7. Labor.
8. Increased administrative costs.
9. Lost sales or revenue.

**Changes to Reduce Costs:** RCW 19.85.030 requires that the following methods to reduce costs be used if it is legal and feasible to do so. The bulleted items below fall into one of each of the listed categories (a) through (e) except that it is not possible to reduce or modify the fee schedule.

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques.

The cost reducing features are laid out by the requirement sections to make it more familiar to plan holders. The following are areas where savings can gain over the current rules:

**Contingency Planning:**

- No requirement to create a system for categorizing spills by size and type.
- No requirement to create a scenario for small and worst case spills.
- Allowing a reference to the northwest area contingency plan (NWACP) for environmental sensitivities [sensitivities] (GRPs), disposal plan, ICS job descriptions, ICS process, and description of the relationships with other plans.
- Create a single plan for both federal and state requirements.
- Encouraging the development of umbrella plans where costs can be shared.
- No requirement to describe the response methods to clean up oil in various environments.

- Equipment lists may be referenced from the response contractors or the northwest area equipment web site.
- No requirement to describe and include the communication systems the plan holder will use.
- No prevention requirements.
- The proposed rules drop the performance standard from the planning standards. This is a cost savings from the existing guidance and WAC.

**Drills:**

- Unannounced drills will only be required in two out of three years.

**Equipment:**

- During the rule-making process businesses were concerned that storage requirements in the draft rules were not viable for some areas of the state. These have been reduced and should now allow for staging of existing equipment, if the businesses cooperate with each other.

**Steps to Involve Business:** Small businesses have had opportunities to be involved, informed and to advise the department on the outcome of the rules. During the rule process, an advisory committee was formed with representatives from small businesses appointed to the group. A survey of affected businesses offered them a chance to report their costs. There have been group and individual meetings with small businesses. We have used focus sheets, e-mails distribution lists, and PowerPoint presentations to communicate with small businesses about these rules.

We are also developing a separate media strategy to accelerate the outreach to persons who may be affected by the new rules.

Public hearings will be held July 11-19 in the following cities: Pasco, Vancouver, Port Angeles, Bellingham and SeaTac. Official public comment period will be June 7, 2006 through July 26, 2006. For more information visit our web site at [www.ecy.wa.gov/programs/spills/spills.html](http://www.ecy.wa.gov/programs/spills/spills.html).

<sup>1</sup> RCW 19.85.040 lists these costs as the costs that must be considered.

A copy of the statement may be obtained by contacting Elin Storey, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (425) 649-7111, fax (360) 407-7288, e-mail [cplanrule@ecy.wa.gov](mailto:cplanrule@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Elin Storey, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (425) 649-7111, fax (360) 407-7288, e-mail [EABR461@ecy.wa.gov](mailto:EABR461@ecy.wa.gov).

June 6, 2006  
 Polly Zehm  
 Deputy Director

**Chapter 173-182 WAC**

**OIL SPILL CONTINGENCY PLAN**

**PART I: PURPOSE, AUTHORITY, APPLICABILITY AND DEFINITIONS**

NEW SECTION

**WAC 173-182-010 Purpose.** The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan (Part II) and drill requirements (Part III), primary response contractor standards (Part IV) and inspection and compliance information (Part V). The provisions of this chapter, when followed, should be implemented and construed so that they will:

- (1) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;
- (2) Ensure continual readiness, maintenance of equipment and training of personnel;
- (3) Support coordination with state, federal, and other contingency planning efforts; and
- (4) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills.

NEW SECTION

**WAC 173-182-015 Applicability.** This chapter applies to facility, tank and nontank vessel companies and Washington state nonprofit corporations (plan holders) required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(1) Vessels subject to this chapter are considered "covered" vessels and include the following vessels, other than public vessels, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities, when operating on the waters of this state:

- (a) Tank vessels.
- (b) Cargo vessels that are three hundred or more gross tons.
- (c) Passenger vessels that are three hundred or more gross tons and have a fuel capacity of at least six thousand gallons.

(2) Facilities subject to this chapter are considered "covered" facilities and include:

- (a) Those facilities that:
  - (i) Transfer oil in bulk to or from a tank vessel or pipeline; and
  - (ii) Are used for producing, storing, handling, transferring, processing, or transporting oil in bulk.
- (b) Those facilities that because of their location, could reasonably be expected to cause substantial harm to the environment if they were to discharge oil into or on the navigable waters of the state or the adjoining shorelines.

(3) Response contractors must be approved by the department before they may serve as primary response contractors for an onshore or offshore facility contingency plan.

NEW SECTION

**WAC 173-182-020 Authority.** RCW 88.46.060, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.340, and chapter 316, Laws of 2006, provide statutory authority for the contingency plan preparation and review requirements, drill and response contractor standards established by this chapter for vessels and facilities.

NEW SECTION

**WAC 173-182-030 Definitions.** (1) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(4) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(5) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that identifies personnel, equipment and services capable of being provided by the primary response contractor within stipulated planning standard times; acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel required to participate in this regulation. Public vessels are not covered vessels for the purposes of this chapter.

(7) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(8) "Director" means the director of the state of Washington department of ecology.

(9) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(10) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts

for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(11) "Ecology" means the state of Washington department of ecology.

(12) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a tank covered vessel, in a single transaction.

(13) "Geographic Response Plans (GRP)" means response strategies developed and approved by the Northwest Area Committee and published in the *Northwest Area Contingency Plan*.

(14) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(15) "High risk sites for planning standards" means an area determined by ecology to contain one or more navigational hazards, abuts or includes areas of critical environmental concern.

(16) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and ignitors.

(17) "Interim storage site" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. Interim storage sites include shoreside fixed and portable tanks, trucks, barges, and other vessels or vehicles used to store recovered oil or oily waste until transport begins.

(18) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(19) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(20) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(21) "Nondedicated" means those response resources listed by a PRC for oil spill response activities that are not dedicated response resources.

(22) "Nonpersistent or group 1 oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(a) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(b) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(23) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(24) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(25) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(26) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(27) "Onshore facility" means any facility, as defined in subsection (12) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(28) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be as found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(29) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(30) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(31) "Persistent oil" means petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(a) Group 2 - specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(b) Group 3 - specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(c) Group 4 - specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(d) Group 5 - specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(32) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(33) "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (12) of this section.

(34) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(35) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills from the vessel or facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(36) "Plan holder" means a facility, vessel company or nonprofit company who has submitted an oil spill contingency plan to the Washington state department of ecology.

(37) "Planning standards" means goals that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(38) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(39) "Public vessel" means a vessel that is owned, or demise chartered, and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

(40) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(41) "Resident" means the spill response resources are staged at a location within the planning area.

(42) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(43) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(44) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.



(45) "Systems approach" means an assessment of the infrastructure and the support resources that a plan holder or a PRC has to mobilize, transport, deploy, sustain, and support the equipment resources necessary for response.

(46) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(47) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(48) "Transfer site" means a location where oil is moved in bulk on or over waters of the state by a covered vessel by means of pumping, gravitation, or displacement.

(49) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(50) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(51) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(52) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(53) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and

provide the methodology, including calculations, used to arrive at the volume.

(54) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

## PART II: VESSEL AND FACILITY OIL SPILL CONTINGENCY PLANS

### Section A—General Planning, Information and Timing

#### NEW SECTION

**WAC 173-182-110 Authority to submit contingency plan.** (1) For tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator; or

(b) The owner or operator of the facilities at which the vessel will be unloading its cargo; or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the tank vessel company.

(2) For nontank vessels regulated under this chapter, a plan may be submitted by any of the following:

(a) The owner or operator; or

(b) The agent for the vessel provided that the agent resides in this state; or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the vessel company.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator; or

(b) A PRC contractually obligated to provide containment and cleanup services to the vessel company.

(4) One plan, or one umbrella plan, may be submitted for multiple vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each vessel or facility.

#### NEW SECTION

#### **WAC 173-182-120 Submitting a contingency plan.**

(1) Plan holders shall submit a plan to ecology no less than sixty-five days prior to the beginning of operations in Washington.

(2) The plan holder shall submit three copies of the plan and all appendices. However, if the plan and appendices are submitted with an acceptable use of electronic copy, the plan holder shall submit at least one paper copy.

(3) Once approved, plan holders shall resubmit their plans to ecology every five years for review and approval.

(4) The plans shall be delivered to:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

Preparedness Section, Contingency Plan Review

Mailing address:  
 P.O. Box 47600  
 Olympia, WA 98504-7600  
 Physical Address:  
 300 Desmond Drive  
 Lacey, WA 98503

#### NEW SECTION

**WAC 173-182-130 Phase in language.** (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications.

(2) For existing approved facility plan holders:

(a) Plans holders for onshore facilities capable of storing one million gallons or more of oil shall submit a revised contingency plan to ecology six months after the effective date of this chapter; except, plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In submitting the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other onshore facilities shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(3) For existing approved vessel plan holders:

(a) Plan holders for tank vessels submit a revised contingency plan to ecology six months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other covered vessels shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(4) PRCs shall submit new applications to ecology within twelve months.

#### NEW SECTION

**WAC 173-182-140 Plan maintenance and reporting obligations.** (1) At least annually, plan holders shall review the plan for accuracy and either:

(a) Update and distribute the amended page(s) of the plan to ecology for review and approval; or

(b) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

(2) If there is a temporary, significant change to response readiness, the plan holder shall notify ecology in writing within twenty-four hours and provide a schedule for the prompt return of the plan to full operational status. Changes which are considered significant include loss of equipment that affects the planning standards provided in the plan, or loss of initial response personnel listed in command and general staff incident command system (ICS) positions provided in the plan or changes in normal operating procedures. A facsimile or electronic mail will be considered written notice.

(3) Failure to notify ecology of significant changes shall be considered noncompliance with this chapter.

(4) If the change to the plan is permanent, the plan holder then shall have thirty calendar days to distribute the amended page(s) of the plan to ecology for review.

(5) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or revoke approval of the plan.

#### NEW SECTION

**WAC 173-182-145 Plan implementation procedures.**

(1) Every plan holder, including each person whose vessel or facility enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan throughout the response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

(2) The plan holder must receive approval from ecology before any significant aspect of the spill response is conducted in a manner contrary to the plan unless:

(a) Such actions are necessary to protect human health and safety; or

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) The plan holder has been directed to perform such actions by the state and federal on-scene coordinators.

#### NEW SECTION

**WAC 173-182-150 Post-spill review and documentation procedures.** (1) Plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if:

(a) Unified command has been established during a spill; or

(b) When significant plan updates are identified or significant lessons can be captured.

Plan holders must accurately track and account for the entire volume of oil recovered and oily wastes generated and disposed during spills.

(2) Plan holders must provide these records to ecology upon request.

### Section B—Contingency Plan Format and Content

#### NEW SECTION

**WAC 173-182-210 Contingency plan format requirements.** (1) Plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans will contain job aids, diagrams and checklists for maximum utility.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

#### NEW SECTION

**WAC 173-182-220 Binding agreement.** (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by the owner or operator, or a designee with authority to bind the owners and operators of the facility or vessel covered by the plan. The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to an aggressive response to spills in Washington;

(b) Commit to notification of spills and significant threats of spills;

(c) Commit to having an incident commander in the state within six hours after notification of a spill;

(d) Commit to the implementation and use of the plan during a spill, and to the training of personnel to implement the plan; and

(e) Verify authority and capability of the plan holder to make necessary and appropriate expenditures in order to implement plan provisions.

#### NEW SECTION

**WAC 173-182-230 Contingency plan general content.** (1) Contingency plans must include all of the content in this section.

(2) In Washington state, the *Northwest Area Contingency Plan* (NWACP) serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) If vessel operations differ by areas, a worst case volume for each area may be submitted to ecology for consideration.

(iii) For multiple facilities using a single plan, one worst case spill volume is required for each facility location.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this regulation.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC to staff ICS positions for the spill management team, then the contract or letter summarizing the terms of the contract shall specifically identify that commitment.

(f) If applicable, a list of all other plans that are relied on for spill response and describe how coordination will occur.

(4) Additional facility content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) List by group and amount the oil handled.

(iii) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(iv) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel content:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

- (e) All ports of call or areas of expected operation in Washington waters;
  - (f) Type of oil(s) handled;
  - (g) Oil volume capacity;
  - (h) Description of the operations covered by the plan;
  - (i) List by group and amount the oil handled.
  - (ii) Include a written description and diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.
- (6) Special exemptions for vessel umbrella plans shall, at a minimum, include the following:
- (a) In lieu of providing vessels names, call signs and country of registry, vessel umbrella plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall make the information available to ecology upon request.
  - (b) Umbrella plans for vessels shall include list by group and amount the oil handled, by the types of vessels that are to be enrolled in the plan. In addition, vessel diagrams shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

NEW SECTION

**WAC 173-182-240 Field document.** (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill. The owner or operator of the vessel or facility shall make the field document available to personnel who participate in oil handling operations and keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan.

Umbrella vessel plans shall include procedures in the plan to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters.

- (2) At a minimum, the field document shall contain:
  - (a) A list of the procedures to detect, assess and document the presence and size of a spill;
  - (b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260; and
  - (c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

**WAC 173-182-250 Initial response actions.** (1) Plan holders are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(2) The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery.

(3) The plan must state how safety assessment including initial air monitoring will be conducted for all types of spills, including spills to groundwater.

(4) The plan must list procedures that will be used to confirm the occurrence of a spill, estimate the quantity and

nature, and to later correct or update the initially reported estimated quantity or the area extent of the contamination if it changes significantly.

NEW SECTION

**WAC 173-182-260 Notification and call-out procedures.** (1) Plan holders must make immediate notifications and call-outs after spills. Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, and establish the order of priority for notification.

(2) The list shall also identify the name of a central reporting office or individuals who are responsible for implementing the notification and call-out process.

(3) This list need not be included in the plan, but shall be available for review by ecology upon request and verified during drills.

(4) In addition, facility plan holders shall also address how notifications will be made to required government agencies for spills to ground or into permeable secondary containment, and threatened or confirmed spills to ground water.

NEW SECTION

**WAC 173-182-270 Maintenance records for response equipment.** (1) Plan holders are required to maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. Each plan shall include the schedules, methods, and procedures for equipment maintenance.

(2) Maintenance records shall be kept for at least five years and made available if requested by ecology for inspection.

NEW SECTION

**WAC 173-182-280 Spill management teams.** (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response operation. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the unit/branch level as depicted in the NWACP standard ICS organizational chart. This list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must be from the state's approved PRC list.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) The planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety as appropriate. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) Vessel plan holders shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) Vessel umbrella plans must include the transition from umbrella plan personnel to the vessel owner or operator's team.

### Section C—Planning Standards

#### NEW SECTION

**WAC 173-182-310 Planning standards.** (1) Ecology shall apply a planning standard when determining the ability of a plan holder to meet the purposes of this regulation. Each planning standard is subject to being verified at scheduled or unannounced drills. In an actual spill event, initial deployment shall be guided by safety considerations and the responsible party must address the entire volume of an actual spill regardless of the planning standards.

(2) The planning standards described below do not constitute cleanup standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this section does not constitute failure to comply with a contingency plan for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

#### NEW SECTION

**WAC 173-182-315 Planning standards for nondedicated work boats and operators.** Each plan holder shall have a system and describe it in the plan to obtain nondedicated work boats and operators that will be available to deploy GRPs, enhance skimming, as vessel of opportunity skimming systems, logistical support or other uses during a spill. At a minimum, the plan shall describe a system that will support the worst case spill response with work boats and

operators that could have arrived on scene beginning at twelve hours.

#### NEW SECTION

**WAC 173-182-320 Planning standards for aerial surveillance.** Each plan shall identify how aerial oil tracking resources will be located and procured. At a minimum, the plan shall describe resources capable of supporting oil spill removal operations for three, ten-hour operational periods during the initial seventy-two hours of the discharge. Resources could have arrived on scene beginning at six hours, except for the high risk areas on the Columbia River where the resources could have arrived on scene within three hours.

#### NEW SECTION

**WAC 173-182-325 Planning standards for dispersants.** (1) Plan holders with vessels carrying group II or III persistent oil as a primary cargo that transit in any area where preapproval or case-by-case use of dispersants is available as per the Northwest area contingency plan, must plan for the use of dispersants.

(2) The plan holder must identify the locations of dispersant stockpiles capable of dispersing the lesser of five percent of the worst case spill volume or twelve thousand barrels per day, using a dispersant to oil ratio of one to twenty.

(3) The plan holder must describe the methods of transporting equipment and supplies to a staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness.

(4) These resources must be capable of being on scene within twelve hours of spill awareness.

#### NEW SECTION

**WAC 173-182-330 Planning standards for in situ burning.** (1) Based on the NWACP, plan holders operating in areas where in situ burning is feasible (has an expedited approval process) must plan for the use of in situ burning.

(2) The plan holder must identify the locations of two fire booms, air monitoring equipment, igniters and aircraft or vessels to be used to deploy the igniters.

(3) The fire booms must be five hundred feet in length and each boom must have an additional one thousand feet of conventional boom, tow bridles and work boats capable of towing the boom for burning operations.

(4) The plan holder must describe the methods of transporting the equipment to a staging area, and appropriate aircraft or vessels to monitor its effectiveness at the scene of an oil discharge.

(5) These resources must be capable of being on scene within twelve hours of spill awareness.

#### NEW SECTION

**WAC 173-182-335 Planning standards for storage.** Plan holders shall identify both on-water devices and shore-side interim storage locations. Shoreside storage can be identified to meet fifty percent of storage requirements in the

tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage.

#### NEW SECTION

**WAC 173-182-345 Determining effectiveness of recovery systems.** Plan holders shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. Ecology will use the criteria in ASTM International F 1780-97 (Reapproved 2002).

(1) Determination of efficiency of recovery systems in varied operating environments and product types

(a) For all skimmers, describe how the device is intended to be transported and deployed. List the boom and work boats associated with each water based skimming system. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

(b) For all oil recovery systems that rely on a vessel of opportunity or nondedicated transport asset, include a statement on how the asset would be located and secured. Include in the plan the mobilization time needed to ensure the assets are available and on scene in a timely manner, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations.

(2) Determination of effective daily recovery capacity (EDRC).

When evaluating contingency plans and PRC applications, ecology will determine an effective daily recovery capacity (EDRC) of oil recovery devices in order to consider potential limitations from available daylight, weather, sea state, interim storage associated with the recovery device and percentage of emulsified oil in the recovered material. When calculating the EDRC, the formula  $R = T \times 24 \text{ hours} \times E$  will be used.

R = Effective daily recovery capacity

T = Throughput rate in barrels per hour (nameplate capacity)

E = 20 percent (efficiency factor).

(3) Equipment owners may request an alternative EDRC by providing all of the following information:

(a) A description of the recovery system which includes skimmer, boom, pump, work boats, and storage associated with the device;

(b) Description of deployment methods that will be used to enhance the recovery system to maximize oil encounter rate during spills;

(c) Documented performance during verified spill incidents; and

(d) Documentation of laboratory testing using ASTM standard methods (ASTM F 631-80) or equivalent test approved by the U.S. Coast Guard.

(4) The following formula will be used to calculate the effective daily recovery capacity for this alternative approach:

$R = D \times U$

R = Effective daily recovery capacity

D = Average oil recovery throughput rate in barrels per hour

U = 10 (hours of operation). 10 hours is used for potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material.

Additionally, EDRC is limited to the storage capacity of the proposed recovery system.

For each skimming system identify the oil storage associated with each recovery system. State the storage capacity integral to the oil recovery system, if applicable. Describe how recovered oil is to be transported to/from interim storage.

#### NEW SECTION

**WAC 173-182-350 Documenting compliance with the planning standards.** The plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) When computing planning standard calculations, plan holders will include time for notification and mobilization of equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the plan holder, mobilization equals thirty minutes. For all other dedicated response equipment mobilization equals one hour. Nondedicated resources shall have a mobilization time of three hours.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land and five knots for water. Ecology will use standard nautical charts and street maps and available on-line mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Plan holders may request approval for higher notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills or unannounced drills.

(a) The request shall include date and time of performance or test, weather/sea state conditions and transportation information.

(b) If ecology accepts these alternative response times then these response times will be tested in unannounced drills to verify alternative calculations.

NEW SECTION

**WAC 173-182-355 Transfer locations for vessels at places where transfers occur, and for facilities with a vessel terminal.**

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage</b>
1	Must meet standards in chapters 173-180 and 317-40 WAC, Oil transfer rule		
2	Must meet standards in chapters 173-180 and 317-40 WAC, Oil transfer rule		
6	Additional 10,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	2 times the EDRC
12	Additional 40,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-360 Transmission pipelines and pipeline tank farms.** (1) To determine the amount of boom necessary for the two hour standard the plan holder must identify by WRIA, state surface waters with the potential to be impacted by a spill from the pipeline.

(a) To determine the initial booming requirements, select the widest stream within the WRIA.

(b) Determine the average river speed at this location.

(i) For streams with a current of two knots boom in the amount of three times the widest point in the stream that the pipeline could affect.

(ii) For streams with a current of three knots the requirement would be for five times the widest point in the stream that the pipeline could affect.

(iii) For streams with a current of five knots the requirement would be for seven times the widest point in the stream that the pipeline could affect.

(2) Or alternatively, the two hour standard will be two thousand feet of boom.

(3) Boom required for the two hour standard shall be dedicated to the facility and may be staged in various locations along the pipeline.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	Boom available at the spill source or downstream of the source could have arrived		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-365 San Juan Island National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within San Juan County must meet this standard. The resources to meet the two and three hour standards must be resident.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 40,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-370 Padilla Bay National Estuary Research Reserve.** Those vessel and facility plan holders that transit or operate north of State Highway 20, east of a line drawn from Shannon Point on Fidalgo Island to Kellys Point on Guemes Island, south of a line drawn from Clark Point on Guemes Island and William Point on Sammish Island must meet the following standards. Some of the GRPs may be deployed by land.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
1.5	A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC



<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage in Barrels</b>
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived on scene. At least 20% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 40,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-375 Commencement Bay—Quartermaster Harbor.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°19'29"N Long. 122°27'23"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
1.5	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 40,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-380 Nisqually National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°06'43"N Long. 122°41'53"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 12,000 feet of boom with at least 2,400 feet of boom being calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10,000 feet of boom with at least 1,000 feet of boom calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-385 Dungeness National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°10'56"N Long. 123°06'38"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived on scene		
6	Additional 7,000 feet of boom with at least 3,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1 times the EDRC
12	Additional 10,000 feet of boom appropriate for all potential areas of impact for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1.5 times the EDRC

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
24	Additional 20,000 feet combination of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-390 Neah Bay Staging Area.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°23'06"N Long. 124°35'59"W (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs. The boom and recovery resources to meet the two, three and six hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 6,000 feet of boom with at least 4,000 feet of open water boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC
12	Additional 10,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 40,000 feet combination of appropriate types of boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-395 Copalis, Flattery Rocks and Quillayute Needles National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within the jurisdictional waters of Washington state from a point Lat. 48°09'12.85"N Long. 124°54'35.63"W and Lat. 47°10'10.57.85"N Long. 124°22'05.15"W (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived on scene		
6	Additional 12,000 feet of boom with at least 6,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC
12	Additional 10,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-400 Grays Harbor National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 46°54'52.25"N Long. 124°10'26.45"W (WGS 1984) outside the entrance to Grays Harbor must meet these standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom or 4 times the largest vessel of boom to be used for containment, protection or recovery could have arrived on scene		
6	Additional 6,000 feet of boom with at least 1,000 feet of open water boom and 3,000 feet of calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 25% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
12	Additional 10,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 40,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

**NEW SECTION**

**WAC 173-182-405 Willapa National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 46°44'00"N Long. 124°11'00"W (WGS 1984) outside the entrance to Willapa Bay must meet these standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of boom with at least 6,000 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 40,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-410 Lewis and Clark National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate on the Columbia River within a five river mile radius of a point at Lat. 46°12'25.17"N Long. 123°25'19.29"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 7,000 feet of boom with at least 4,200 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10,000 feet of boom with at least 5,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less and 25% must be open water capable	1.5 times the EDRC
24	Additional 40,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived. At least 25% must be open water capable	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-420 Ridgefield National Wildlife Refuge.** Those vessel and facility plan holders that transit or operate on the Columbia River within a five nautical mile radius of a point at Lat. 45°38'29.67"N Long. 122°43'10.44"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
6	Additional 6,000 feet of boom with at least 3,000 feet of boom being calm water - current capable containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10,000 feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 40,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

**NEW SECTION**

**WAC 173-182-430 McNary National Wildlife Refuge high risk site.** Those vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 46°09'46.78"N Long. 118°58'14.87"W (WGS 1984) must meet the following standards.

<b>Time (hours)</b>	<b>Boom/Assessment</b>	<b>Minimum Oil Recovery Rate % of WCS volume per 24 hours</b>	<b>Minimum Storage Volume</b>
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 8,000 feet of boom with at least 4,800 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10,000 feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 40,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-440 Planning standards for other vessel transit locations.**

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
3	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
6	Additional 10,000 feet of boom appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet - combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 40,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

**WAC 173-182-450 Planning standards for the Washington coast.** These standards apply to vessels that enter Washington waters at the Columbia River, Grays Harbor or the Strait of Juan de Fuca, and offshore facilities.

Plan holders shall be capable of sustaining a worst case spill response and shall develop an addendum specific to Washington's coast, including:

- (1) The capability, if applicable, for in situ burning, dispersant, and mechanical recovery;
- (2) Surveillance equipment (including fixed wing, helicopters and low visibility equipment) to provide for aerial assessment of spill within six hours of spill awareness;
- (3) Time frames and mechanisms to cascade in equipment and other resources for up to seventy-two hours;
- (4) Ten thousand feet of boom appropriate for shoreline protection, containment and/or ten thousand feet of open water boom for enhanced skimming, containment or other use to arrive within twelve hours; and
- (5) Twenty thousand feet of boom appropriate for containment, protection or recovery to arrive within twenty-four hours.

**Section D—Response and Protection Strategies for Sensitive Areas**

NEW SECTION

**WAC 173-182-510 Requirements for response and protection strategies.** (1) Plan holders shall have methods to track and contain spilled oil and enhance the recovery and removal operations that are described in the plan.

(2) Each plan shall include how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;

(b) The plan shall include a description of the sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics. The GRPs have been developed to meet this requirement and plans may refer to the NWACP to meet this requirement. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect;



(c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;

(d) Identification of shellfish resources and methods to protect those resources;

(e) Identification of significant economic resources to be protected in the geographic area covered by the plan; and

(f) Each facility with the potential to impact a "sole source" aquifer or public drinking water source must identify the types of substrate and geographical extent of sensitive sites.

(3) Each plan shall identify potential initial command post locations.

#### NEW SECTION

**WAC 173-182-520 Planning standards for shoreline cleanup.** (1) Each plan shall identify, personnel and equipment, including absorbent material, to protect and clean three miles of shoreline and support for three days a total of one hundred people.

(2) The plan shall include a description for how the resources necessary to support fourteen days of shoreline cleanup will be obtained and brought to the spill site.

(3) Resources shall be appropriate to the shoreline areas that could be impacted and have the capability to arrive on scene within twenty-four hours.

#### NEW SECTION

**WAC 173-182-530 Planning standards for ground water spills.** (1) Each facility plan shall include a description of the methods to be used to immediately assess and mitigate ground water spills and prevent further migration.

(2) Facility plan holders shall include contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to ground water. These resources shall have the capability to arrive on scene beginning at twelve hours of spill awareness.

#### NEW SECTION

**WAC 173-182-540 Planning standards for wildlife rescue and rehabilitation.** The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty-four hours of spill awareness.

### Section E—Plan Evaluation

#### NEW SECTION

**WAC 173-182-610 Plan evaluation criteria.** Plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans based on these conditions:

(1) Only ecology approved PRC resources, plan holder owned resources and resources guaranteed through written

mutual aid agreements shall be counted when calculating the planning standards.

(2) If a plan holder operates in an area where more than one planning standard designation applies, ecology will determine the more stringent of planning standards.

(3) Ecology will count equipment if it is appropriate for the operating environment within the geographic area defined in the plan. Ecology will use criteria from sources such as the ASTM International documents, World Catalogue, manufacturer's recommendations, the Regional Equipment list, the federal OSRO guidelines, the *Field Operations Guide* (FOG) resource typing guidelines and drills and spills to make approval and verification determinations on operating environments.

(4) Ecology will count boom if it is appropriate to the operating environment and support equipment is identified. Support equipment for boom means transportation devices, cranes, anchors, boom tackle, connectors, work boats and operators.

(5) Ecology will only count dedicated response resources towards the one and two hour standards.

#### NEW SECTION

**WAC 173-182-620 Alternative method of evaluating planning standards.** (1) A plan holder may request that ecology review and approve a plan based on alternative planning standards. Such requests should be submitted with the plan. Ecology will provide the proposal for a thirty day public review period.

(2) The proposal must include, at a minimum:

(a) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(b) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(c) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(3) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal would provide an equivalent level of environmental protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(4) Ecology may reconsider an approval at any time, in response to significant plan changes.

#### NEW SECTION

**WAC 173-182-630 Process for plan approval.** (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of deficiencies within five days. The public review period does not begin until a complete plan is received.

(2) Once a plan is complete, ecology shall notify interested parties and make plans available for public review.

Comments will be accepted during the first thirty calendar days of the review period.

(3) If the plan is approved, the plan holder receives a certificate describing the terms of approval, including plan expiration dates.

(a) Ecology may approve a plan conditionally and require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved.

(i) Precautionary measures may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Precautionary measures may also include additional requirements to ensure availability of response equipment.

(ii) Plan holders who fail to meet conditional requirements or provide required changes in the time allowed will forfeit conditional approval status.

(b) If plan approval is denied, the plan holder shall receive an explanation of the factors for denial and a list of actions necessary to gain approval. The plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved plan.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

**PART III: DRILL PROGRAM**

NEW SECTION

**WAC 173-182-700 Drill participation, scheduling and evaluation.** (1) Plan holders and PRCs shall participate in an inspection and drill program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Drill Program (PREP), is relied on to test each component of the response plan.

(2) Ecology shall be provided an opportunity to help design and evaluate all tabletop and deployment drills. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table below.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Plan deficiencies identified in the written evaluation may require plan holders to make specific amendments to the plan.

(6) A plan holder may request an informal review of the ecology drill evaluation or spill evaluation within thirty days of receipt of the evaluation.

(7) Ecology may require the plan holder to participate in additional drills beyond those required in this section.

NEW SECTION

**WAC 173-182-710 Type and frequency of drills.** The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - one in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - done two per year	These drills shall include, GRP deployments, testing of all types of equipment and demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.

(1) Tabletop drills:

(a) Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the ICS. Role playing shall be required in this drill.

(b) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the contingency plan shall be mobilized in state for a drill, except that: At ecology's discretion, away team members may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state no longer than once every five years.

(2) Equipment deployment drills:

(a) During the triennial cycle, deployment drills shall include a combination of owned and contracted assets.

(b) Plan holders should ensure that each type of equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to

meet the planning standards, including recovery systems and system compatibility. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a GRP strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(3) Plan holders may receive credit for GRP deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules and participates in the drill.

(4) Ecology initiated inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic unannounced drill and inspection program to survey, assess, verify, inspect or deploy response resources listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced vessel notification drills are designed to test a vessel's ability to follow the notification and call-out process in the plan.

(d) Prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

#### NEW SECTION

**WAC 173-182-720 Evaluation criteria.** The PREP guidance document lists fifteen core components that shall be demonstrated during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate drills. The core components are as follows:

(1) Notifications: Test the notifications procedures identified in the plan.

(2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) Ability to operate within the response management system described in the plan. This includes demonstration of the ICS staffing and process identified in the plan.

(4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.

(5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the

discharge and provide continuing assessments of the effectiveness of the tactical operations.

(6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) Recovery: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. Includes mitigation and removal activities, e.g., dispersant use, in situ burn use, and bioremediation use.

(8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimode.

(12) Transportation both for execution of the discharge and support functions.

(13) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(14) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(15) Procurement: Demonstrate the ability to establish an effective procurement system.

(16) Documentation: Demonstrate the ability of the plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

#### NEW SECTION

##### **WAC 173-182-730 Other ways to get drill credit. (1)**

Plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate and evaluate the spill response. Credit from spills shall not entirely alleviate the plan holder's responsibility to drill.

To obtain credit, a written request to ecology shall be made within sixty days of completion of the cleanup operations.

(a) The request shall include documentation supporting the components of WAC 173-182-720.

(b) Plan holders shall also submit a lessons learned summary with the request for drill credit.

(2) Plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the

types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self certification documentation shall be provided to ecology within thirty days of the drill;

(d) The plan holder has one response plan for a number of facilities or a fleet of vessels; and

(e) Plan holders seeking credit for a scheduled out-of-state drill shall notify ecology in writing ninety days in advance, to provide ecology an opportunity to participate.

#### NEW SECTION

**WAC 173-182-740 Drill requirement waivers.** (1) Plan holders may request a waiver for a deployment or table-top drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Plan holder's requests for a drill waiver will be made available for public review for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the letter.

### **PART IV: PRIMARY RESPONSE CONTRACTOR (PRC) STANDARDS**

#### NEW SECTION

**WAC 173-182-800 PRC application.** (1) To become a state-approved PRC, a response contractor must:

(a) Submit an application as set forth in subsection (2) of this section;

(b) Have a process to provide twenty-four hour/day contact for spill response;

(c) Commit to begin mobilization efforts immediately upon notification but no later than one hour from notification of a spill;

(d) Maintain equipment in accordance with manufacturer specifications; and

(e) Assist plan holders in meeting the requirements for drills in Washington.

(2) To apply, a contractor should complete, sign and submit the application form number ECY 070-216.

#### NEW SECTION

**WAC 173-182-810 Submittal and review of contractor applications.** (1) Once an application is received, ecology will determine whether it is complete. If not, the response contractor shall be notified of deficiencies in writing and given a time period for submitting the required information.

(2) An on-site inspection to verify equipment and personnel readiness will be conducted once the application is approved. During the inspection, ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of the equipment listed in the application. Inspections may be conducted at any/all equipment locations. Any

resources not on-site at the time of an inspection shall be accounted for by company records.

(3) If the application is approved and the inspection is satisfactory, the contractor shall receive a letter of approval describing the terms of approval, including expiration dates and EDRC of the recovery equipment. PRC approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

(4) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

(5) Approval of a response contractor by ecology does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

#### NEW SECTION

**WAC 173-182-820 Significant changes require notification.** (1) The PRC is responsible to provide written notification to ecology and plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application. The notice shall include the identification of back up resources sufficient to maintain the PRC readiness level, and the estimated date that the original equipment shall be back in full service. Changes which are considered significant include loss of equipment that affect the planning standard spreadsheet of any plan holder covered by the PRC, personnel identified in ICS positions by plan holders, changes in equipment ownership, or a greater than ten percent decrease in available spill response equipment. Failure to report changes could result in the loss of PRC approval. Notification by facsimile or e-mail will be considered written notice.

(2) If ecology determines that PRC approval conditions are no longer met, approval may be revoked or conditionally modified. The PRC will receive a written notice of the loss of approval or conditional modifications and a time period to either appeal or correct the deficiency.

### **PART V: INSPECTION AND COMPLIANCE INFORMATION**

#### NEW SECTION

**WAC 173-182-900 Inspections.** Ecology may verify compliance with this chapter by unannounced inspections in accordance with RCW 90.56.410 and chapter 88.46 RCW. These inspections will be used to verify training and equipment maintenance records, verification of drills, accuracy of call-out and notification lists, spill management team lists, ICS forms, waste disposal records, post-spill reviews and lessons learned.

#### NEW SECTION

**WAC 173-182-910 Noncompliance.** (1) If a plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

- (a) Place conditions on approval; and
  - (b) Require additional drills to demonstrate effectiveness of plan; or
  - (c) Revoke its approval.
- (2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.
- (3) Any violation of this chapter may be subject to the enforcement and penalty sanctions.
- (4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a covered vessel, facility or person is in violation of this section shall be considered a separate violation.

#### NEW SECTION

**WAC 173-182-920 Operation without plan.** (1) A covered vessel may not enter or operate on the waters of the state without an approved, or conditionally approved, contingency plan. A vessel not in compliance with this chapter may enter waters of the state if the Coast Guard has determined that the vessel is in distress.

(2) The owner or operator of a regulated facility may not operate without an approved, or conditionally approved, plan nor transfer cargo or passengers to or from a tank vessel that does not have an approved, or conditionally approved, contingency plan. The owner or operator of a covered vessel may not transfer oil to or from an onshore or offshore facility that does not have an approved or conditionally approved contingency plan.

(3) Ecology may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility or person is in violation of this section shall be considered a separate violation.

(4) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

#### NEW SECTION

**WAC 173-182-930 Severability.** If any provision of this chapter is held invalid, the remainder of the rule is not affected.

**WSR 06-12-125**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 7, 2006, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-041.

Title of Rule and Other Identifying Information: Chapter 308-108 WAC, Driver training schools.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA, on July 11, 2006, at 3:00 p.m.

Date of Intended Adoption: July 12, 2006.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by July 10, 2006, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-108-020 to remove definitions made redundant by chapter 219, Laws of 2006, and to add definitions clarifying terms used in that chapter; creates a new section in chapter 308-108 WAC to specify fees for driver training school and instructor licenses and examinations; creates a new section in chapter 308-108 WAC to specify requirements for background checks and fingerprint checks for driver training school owners, staff, and instructors; amends WAC 308-108-080 to delete superseded background and fingerprint checks, and to strengthen requirements for instructor's license applicants; amends WAC 308-108-090 to increase the number of hours necessary for instructor training, clarify curriculum requirements, and set reporting requirements for instructor-trainer led instruction; amends WAC 308-108-100 to make a technical change necessary due to chapter 219, Laws of 2006, and to make an editing change; amends WAC 308-108-110 to clarify requirements for the first aid kit to be kept in traffic safety education vehicles and to clarify record-keeping requirements; amend WAC 308-108-120 add to driver training school administration requirements, including new requirements under chapter 219, Laws of 2006; amends WAC 308-108-130 to clarify records review requirements; amends WAC 308-108-140 to clarify reporting requirements; amends WAC 308-108-150 to clarify requirements for driver training school course curriculum schedule; amends WAC 308-108-160 to increase the number of hours of behind the wheel instruction and provide for appropriate documentation; amends WAC 308-108-170 to clarify methods for ensuring student accomplishment; and amends WAC 308-108-180 to delete outdated language.

Reasons Supporting Proposal: Adoption of new rules and amendments to the existing rules are required to incorporate program changes made necessary by the enactment of chapter 219, Laws of 2006.

Statutory Authority for Adoption: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340.

Statute Being Implemented: Chapter 46.82 RCW.

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: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforce-

ment: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

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 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 6, 2006

Barbara Sandahl, Director  
Policy and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-020 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has had prior approval of the director. ~~((Behind the wheel instruction is characterized by driving experience.))~~

(2) "Branch office" or "branch classroom" means a facility within a thirty-five mile radius of a driver training school's established place of business that has been approved by the department for use by the driver training school.

(3) ~~((Classroom means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.~~

~~(4) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction conducted by or under the direct supervision of a licensed instructor or licensed instructors.~~

(5) "Driver training school" means a commercial business offering instruction in the operation of automobiles for a fee:

~~(a) To any person for the purpose of securing traffic safety education prior to applying for a basic driver's license; and/or~~

~~(b) For the enhancement of an experienced driver's knowledge, skill, and ability.~~

~~(6)) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.~~

(4) "Inactive Instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

(5) "Instructor-trainer" means a currently licensed instructor who is training driving instructors and who has not less than:

~~(a) ((Not less than)) One thousand hours ((or five years of previous)) of experience in providing traffic safety education in the past year; ((or))~~

~~(b) ((Not less than)) Five years of previous experience in providing traffic safety education; or~~

~~(c) One thousand hours or five years experience in the field of traffic safety((, documented)) and proof of training acceptable to the director in ((teaching training techniques to)) how to teach and train others, and not less than three hundred hours of previous experience in ((providing)) training ((to)) others.~~

~~((7) "Owner" means a person or group that has a financial interest in a driver training school.~~

~~(8)) (6) "Records" means all documents, papers and reports required to own a driver training school, including but not limited to:~~

~~(a) Vehicle registration, title, insurance policy, and maintenance information;~~

~~(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; and~~

~~(c) Student classroom and behind-the-wheel instruction reports.~~

(7) "Student" means any person ~~((enrolled in a traffic safety)) attending a driver training education course ((for which a fee is paid)) who is as least fifteen years of age.~~

~~((9) "Traffic safety education" means a course of instruction in the operation of automobiles that consists of two phases, classroom instruction and behind the wheel instruction. Each phase must meet basic course requirements established by the department.))~~

NEW SECTION

**WAC 308-108-025 Fees.** The following fees shall be charged by the driver services division, department of licensing:

Title of Fee	Fee
Driver training school license original application	\$500.00
Driver training school license renewal application	250.00
Driver training school license transfer	500.00
Branch office or branch classroom original application	250.00
Branch office or branch classroom renewal application	125.00
Instructor's license original application	75.00
Instructor's license renewal application	25.00
Duplicate license	10.00
Knowledge and/or skill examination	25.00

NEW SECTION

**WAC 308-108-070 Background check and fingerprint check.** An instructor, owner, or other person affiliated

with a school who has contact with students must complete a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation, including a fingerprint check, as required by RCW 46.82.325(1).

(1) An applicant for an instructor's license must complete the check at the time of initial application or, for a currently licensed instructor who has not completed such check within the past five years, at the time of the next application for a license renewal.

(2) An owner must complete the check at the time of initial application for a driver training school license or, for an owner of a currently licensed school who has not completed such check within the past five years, at the time of the next application for a license renewal.

(3) A person affiliated with a school who has contact with students must complete the check at the time of initial affiliation with the school or, for a person who is currently affiliated with a school who has not completed such check within the past five years, within the sixty-days prior to the next application for a license renewal for the school. A person who must complete the check under this subsection at the time of initial affiliation with a school may begin duties following the department's notice that it has received an acceptable local criminal background check through the Washington state patrol criminal identification system, pending the outcome of the fingerprint check using the fingerprint card.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-080 Instructor's license—Application**~~((—Background check and fingerprint check))~~. (1) ~~((Unless waived by the department under the provisions of RCW 46.82.325(3), an applicant for an instructor's license must complete a criminal background check, including a fingerprint check, at the time of initial application or, for a previously or currently licensed instructor who has not completed such check, at the time of the first re-qualification examination required under RCW 46.82.320(1) following the adoption of this rule.~~

~~((2))~~ To ensure that an applicant or instructor meets the conditions set out in RCW 46.82.330 (2)(a), the department shall review the complete abstract of driving record for all instructor's license ((applicant's complete abstract of driving record at the time of each initial and renewal application. For purposes of RCW 46.82.330 (3)(a)) applicants and licensed instructors. For this purpose:

(a) A moving traffic violation is an offense listed as a moving violation in WAC 308-104-160. The department will determine the number of moving traffic violations received by an applicant within a given time period based on the date(s) that the violation(s) occurred.

(b) An alcohol-related traffic violation will be deemed to have occurred if within the ~~((three))~~ seven-year period immediately preceding the time of application an alcohol-related traffic incident occurred that resulted in:

(i) A conviction or finding that a traffic infraction was committed for violation of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.519, 46.61.5195, 46.61.520 (1)(a), 46.61.-

522 (1)(b), or 46.20.5249, or a substantially similar law, administrative regulation, local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state;

(ii) An administrative action imposed under RCW 46.20.3101;

(iii) An administrative action imposed under RCW 46.25.090 (1)(a), (b), or (e); or

(iv) Entry into a deferred prosecution agreement for an alcohol-dependency based case.

(c) A driver's license suspension, cancellation, revocation, or denial will be deemed to exist within the preceding ~~((three))~~ five years if any such suspension, cancellation, revocation, or denial has been in effect at any time within the ~~((three))~~ five-year period immediately preceding the time of application.

~~((2))~~ (2) The instructor's license applicant must submit satisfactory evidence of completion of ~~((the required sixty hours of))~~ a course of instruction as approved by the director in the training of drivers at time of initial application.

(3) For instructor's licenses that expire on or after January 1, 2007, each application for renewal of an instructor's license must be accompanied by proof of no less than eight hours of continuing professional development as approved by the director.

(4) Application for initial or renewal of an instructor's license is not complete until the applicant passes any examination requirement for licensure under RCW 46.82.320(1) or 46.82.330 (2)(e).

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-090 Instructing instructors in the training of drivers.** (1) The ~~((sixty-hour))~~ course of instruction approved by the director in the training of drivers required under RCW 46.82.330 ((2)) (2)(d) shall include instruction in driver education classroom methods and principles that prepare an instructor to provide traffic safety education as described in these rules and in state law.

(2) To ensure the quality of the training given, the instruction course must:

(a) Be provided by, and under the direct supervision of:

(i) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(ii) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(iii) An instructor-trainer.

(b) Be not less than one hundred hours in total length and consist of:

(i) Not less than ~~((twelve))~~ fifty hours of instruction in behind the wheel teaching methods;

(ii) Not less than ~~((six))~~ ten hours of supervised practice behind the wheel teaching of driving techniques;

(iii) Not less than ~~((thirty))~~ forty hours total of ~~((approved))~~ instruction ((covering each)) that includes all of the following areas:

(A) Education or special education;

(B) Driver education teacher, instructor, or trainer skills training;

(C) Classroom teaching techniques; ~~((and))~~

(D) Communication skills; ~~((and))~~

~~((iv) Not less than twelve hours of instruction that shall prepare the instructor to:))~~

~~((A) Communicate))~~ (E) Teaching the concepts of driving and traffic safety to others;

~~((B) Demonstrate))~~ (F) Educational methods, theories and concepts in teaching a driver education course, and knowledge of all aspects of the driving task;

~~((C) Develop))~~ (G) Developing instructional materials and activities that aid student learning and performance;

~~((D) Define))~~ (H) Defining and ~~((describe))~~ describing the nature of the driving task on public highways;

~~((E) Establish))~~ (I) Establishing and ~~((maintain))~~ maintaining classroom organization;

~~((F) Manage))~~ (J) Managing enrollment, student scheduling, student records, and required reports; and

~~((G) Plan))~~ (K) Planning a course of student instruction with outlines, lesson plans, and student performance evaluation tools.

(3) ~~((Not less than thirty days prior to any instructor training being conducted by an instructor-trainer, the instructor-trainer or owner of the driver training school where the instructor-trainer is employed shall submit a course curriculum for department review and approval))~~ The department must approve an instructor training course curriculum before use by an instructor-trainer.

(4) Any revision to ~~((the))~~ an approved instructor training course curriculum used by an instructor-trainer must be submitted for review and approval by the department no less than thirty days prior to its use.

(5) The department may consider other academic instruction in lieu of that listed in subsection (2)(b) of this section.

(6) Before an instructor training course is given, the instructor-trainer or owner must submit a list of the dates, times, and locations for the training, the names of the persons to be trained, and the name of the instructor-trainer who will be providing training.

(7) The department may monitor instructor education courses at any time to ensure that the instructor training requirements of this section are being satisfied.

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

**AMENDATORY SECTION** (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-100 Place of business—Classroom space.** (1) The place of business of a driver training school:

(a) Shall not be established nor any business of a driver training school conducted or solicited within one thousand feet of an office building owned or leased by the department of licensing in which examinations for driver's licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building. If the department establishes an office in which examinations for driver's licenses

are conducted within one thousand feet of a driver training school's existing location, the driver training school may continue operations in such location until there is a change in school ownership, or the license to operate is not renewed or is suspended or revoked for cause.

(b) Shall be regularly occupied and used exclusively for the business of giving driver instruction. Regularly occupied means that the public and the department can expect to make contact with the school owner or its staff or instructors at the main office during its business hours; and

(c) Shall meet all applicable requirements of chapter 46.82 RCW.

(2) A driver training school's classroom space shall:

(a) Provide sufficient seating and table or desk space for all students enrolled in each class;

(b) Be properly equipped with all other equipment necessary for student training and instruction purposes; and

(c) Use walls, partitions, or separate scheduling of classroom and office activities if the classroom shares a single space with the driver training school office in order to mitigate student distraction or disruption of the instruction.

**AMENDATORY SECTION** (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-110 Traffic safety education vehicles.**

(1) All vehicles used for student instruction by a commercial driver training school shall:

(a) Carry a twenty-piece occupational safety and health act (OSHA) approved first aid kit, fire extinguisher, and emergency strobe light or reflective triangles;

(b) Pass an annual inspection meeting minimum equipment and safety criteria established by the department that has been conducted by or for the school owner; and

(c) Be used exclusively for driver training purposes at all times when student instruction is being given.

(2) Records of all traffic safety education vehicles used by a commercial driver training school shall:

(a) Be maintained at the school's primary place of business; and

(b) Include the original insurance policy or policies covering the vehicles and copies of the current vehicle registrations and annual vehicle safety inspection report.

**AMENDATORY SECTION** (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-120 Administration.** (1) The driver training school's license and all instructor certificates shall be posted in a conspicuous place at the location where instruction takes place. The school license must be posted before ~~((=~~

~~((a) Enrolling any students in a course of instruction;~~

~~((b) Issuing a verification of enrollment to any student; and~~

~~((c) Any classroom or behind the wheel instruction begins))~~ engaging students in a course of instruction.

(2) Each driver training school shall adopt and provide for its customers a written policy that includes, but is not limited to:

(a) Enrollment criteria;

(b) Student fees and student fee refunds;



- (c) Course failures and course repeats; ~~((and))~~
- (d) The minimum and maximum course duration;
- (e) Refusing to allow a student to attend a driver training education course before the age of fifteen years;
- (f) Refusing to enroll new students in a driver education course after the first three classes have been completed; and
- (g) Information about Washington's intermediate licensure requirements, restrictions, and penalties.
- (3) Driver training school owners and instructors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. Student records shall document for each student:
- (a) Course attendance, starting, and ending dates;
- (b) ~~((Instruction starting and ending))~~ The dates and times for each session of classroom and behind the wheel instruction;
- (c) Classroom and behind the wheel progress and time involvement or flowchart;
- (d) Classroom and behind the wheel performance evaluation results; ~~((and))~~
- (e) The name and signature of the instructor who provided each session of classroom and behind the wheel ~~((training session in which the student participated))~~ instruction; and
- (f) That both the student and parent received intermediate license requirements, restriction, and penalty information.
- (4) Student records must be maintained by a driver training school for ~~((the past five))~~ three years from the date instruction has ended.
- (5) Driver training school records that must be maintained by a driver training school for the past three years, ~~((including))~~ include but are not limited to:
- (a) The school's written curriculum guide~~((;))~~;
- (b) Insurance policies~~((;))~~;
- (c) Collision or injury reports~~((;))~~;
- (d) Traffic safety education vehicle registration records~~((;))~~; and
- (e) Records of any traffic violations committed by an instructor employed by the school~~((, must be maintained by a driver training school for the past three years))~~.
- (6) Upon the sale or other transfer of a school by its owner, the school and student records shall be transferred to the new owner and become the property and responsibility of the new owner.
- (7) The driving school owner must notify the department within thirty days of closing the school and submit all unused traffic safety certificates and student course completion reports to the department.
- (8) Class size must not exceed city fire code requirements for the classroom.
- (9) Traffic safety education classroom hours shall not overlap between two or more classes.
- (10) Failure to renew a school license before it expires will put all related branch office or branch classroom licenses into an inactive status.
- (11) Student records are subject to department audit and inspection anytime after ninety days of the school's initial licensing, or as soon as practicable for the department.

(12) Branch office or classroom locations must display an official license issued by the department in a conspicuous place.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-130 Inspection and review.** (1) The department may require that a driver training school owner submit to an inspection or review of the school's operations and records at any time during regular business hours.

(2) Records shall be housed and immediately available for inspection at a driver training school's primary place of business. Branch office records ~~((not immediately available for inspection))~~ may be housed at the primary place of business, however, such records must be made available for inspection at the branch location within forty-eight hours following a request for review by the department.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-140 Reporting requirements.** All driver training school owners shall:

(1) Report to the department within ~~((thirty))~~ ten days any driving or traffic-related incidents involving an instructor employed by the school, including but not limited to:

- (a) Conviction for a traffic violation;
- (b) Finding that a traffic infraction has been committed;
- (c) Entry into a deferred prosecution agreement; or
- (d) Suspension, revocation, cancellation, or denial of driving privileges.

(2) Report to the department within twenty-four hours following any traffic safety education vehicle involved in a traffic collision for which an accident report must be or has been made under the provisions of RCW 46.52.030.

(3) Forward to the department by the seventh day of each month, a ~~((monthly))~~ report of student enrollment in traffic safety education courses provided by the school, including but not limited to:

(a) The start date and end date of any courses provided by the school that are initiated during the reporting period, including the total number of students enrolled in each course;

(b) The names and certificate numbers of all instructors providing classroom and/or behind the wheel instruction for each course;

(c) The names and instruction permit or driver's license numbers or dates of birth of all students enrolled in each course, along with the identifying number of the traffic safety education certificate reserved for each student for issuance upon successful completion of the course.

(4) Not less than annually, forward to the department a vehicle inspection report ~~((of the annual inspection of each traffic safety education vehicle conducted))~~ as required under WAC 308-108-110 (1)(b)~~((The driver training school owner must maintain a copy of the report in the school's records))~~ for all traffic safety education vehicles in use by the school.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-150 Curriculum schedule.** A driver training school may offer classroom and behind the wheel instruction to students throughout the year. In order to be approved by the director, a curriculum schedule must satisfy or include the following requirements:

(1) Classroom and behind the wheel instruction ~~((must be))~~ that is complementary. This means that classroom instruction is ~~((augmented))~~ integrated in a timely manner ~~((by))~~ with behind the wheel instruction~~((-))~~;

(2) Having students under age eighteen ~~((shall))~~ complete no more than two hours of classroom instruction and no more than one hour of behind the wheel instruction during any single day~~((-))~~;

(3) For ~~((purposes of meeting))~~ students under the age of eighteen to meet the traffic safety education requirement of RCW 46.20.100, instruction ~~((for students under the age of eighteen must))~~ that:

(a) ~~((Include))~~ Includes not less than thirty hours of classroom instruction; and

(b) ~~((Meet))~~ Meets the behind the wheel instruction and observation requirements of WAC 308-108-160~~((-))~~;

(4) Classroom and behind the wheel instruction ~~((must be provided))~~ in a course that is scheduled for not less than ~~((thirty))~~ forty days and not more than twenty-six contiguous weeks in length~~((-))~~;

(5) Student enrollment in ~~((a class may be open for))~~ and attendance of classes no later than the third class session after the start date of ~~((a traffic safety education))~~ the course. Once enrollment is closed, no new students may be enrolled in that traffic safety education course or participate in the classroom instruction or behind the wheel instruction and observation for that course;

(6) Arrangements for any missed classroom sessions to be made up within the maximum twenty-six week length of the course. All assignments and instruction must be equivalent to the instruction given during the missed sessions;

(7) Distributing to students instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; and

(8) Review and approval of the local school curriculum by the department as part of the initial application for a school license. To help ensure that minimum standards of instruction are met, the local school curriculum must include but is not limited to the following:

(a) Comprehensive elements of classroom and behind the wheel instruction as defined by the department;

(b) Comprehensive written and behind the wheel examinations, to include:

(i) Written examinations as submitted to and approved by the department; and

(ii) Behind the wheel examination criteria as approved by the department;

(c) A flow chart that indicates how the classroom and behind the wheel instruction are integrated; and

(d) Information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-160 Behind the wheel instruction and observation.** (1) Instruction provided to students under the age of eighteen must include:

~~((+))~~ (a) Behind the wheel instruction consisting of:

~~((a) Four or more))~~ (i) Not less than six hours of on-street behind the wheel vehicle operation under the direct supervision and direction of a licensed instructor; or

~~((b))~~ (ii) ~~((Three))~~ Five or more hours of on-street behind the wheel vehicle operation and four or more hours of driving simulation instruction under the direct supervision and direction of a licensed instructor; and

~~((2))~~ (b) One or more hours of additional in-vehicle driver observation.

(2) Behind the wheel instruction must be documented on a form provided or approved by the department, including the time the instruction was conducted, the signature of the instructor, and initials of the student.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-170 Ensuring student accomplishment.** (1) Each driver training school must have a written curriculum guide available to each instructor and such guide shall be used for student instruction.

(2) ~~((At a minimum))~~ In order to receive a traffic safety education certificate, all students under the age of eighteen must ~~((receive))~~ satisfactorily complete all portions of the course of instruction ~~((according to))~~ included in the student curriculum as approved by the driver instructors' advisory committee.

(3) In order to satisfactorily complete a school's driver training course, all students under the age of eighteen must pass a comprehensive driving knowledge and skills test or tests meeting standards established by the department.

(4) Each driver training school must assess the needs and progress of students and give appropriate direction for additional driving experience and/or parent guided practice.

AMENDATORY SECTION (Amending WSR 05-16-061, filed 7/29/05)

**WAC 308-108-180 Disciplinary action**~~((—Term of license denial, suspension, or revocation))~~—**Public notice of actions taken.** (1) Licensee responsibilities:

(a) School owners and instructors are responsible for knowing and complying with the requirements of chapter 46.82 RCW and rules promulgated under that chapter.

(b) Any failure to comply with these requirements may lead to disciplinary action affecting an applicant's or licensee's privileges to be licensed or to otherwise operate a commercial driver training school and/or to provide classroom and behind the wheel instruction.

(2) ~~((For purposes of consistently administering RCW 46.82.350 and 46.82.360, the department will use the following guidelines for determining the length of license denial, suspension, or revocation of a driver training school or instructor:~~

## WSR 06-12-126

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed June 7, 2006, 11:27 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 06-02-036.

Title of Rule and Other Identifying Information: Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA, on July 12, 2006, at 4:00 p.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by July 11, 2006.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by July 11, 2006, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Creates a new section in chapter 308-104 WAC to set the range of the driver's license suspension, cancellation, or denial imposed by the department when a driver has been convicted of or has been determined to have committed one of the prohibited practices relating to driver's licenses listed under RCW 46.20.0921, such as license fraud or providing false information when applying for a license. Makes it clear that for purposes of the prohibited practices, an application for a commercial driver's license includes both the application for the regular driver's license and for the commercial driver's license endorsement.

Reasons Supporting Proposal: Federal regulations, 49 C.F.R. 383.73(g) requires that the state shall at a minimum suspend, cancel, or revoke a person's commercial driver's license or his or her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least sixty consecutive days if he or she has falsified information in connection with an application for a commercial driver's license. The state laws that apply to suspension, cancellation, or denial of commercial driver's licenses for fraudulent application or falsifying information apply equally to regular driver's licenses, so the proposed rule covers both licenses. Adopting a rule on this subject will ensure that the state of Washington remains in compliance with federal requirements.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.207, 46.20.291.

Statute Being Implemented: RCW 46.20.207 and 46.20.291.

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: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

~~(a) Permanent revocation or denial of a license for conviction of a sexual offense involving a minor;~~

~~(b) Revocation or denial of a license for ten years for conviction of a felony, when the felony is related to the activity for which the person is seeking licensure;~~

~~(c) Except as otherwise provided in subsections (2)(a) and (2)(b) of this section, revocation or denial of a license for one year for conviction of a felony, crime of violence, dishonesty, deceit, indecency, degeneracy, or moral turpitude;~~

~~(d) Revocation or denial of a license for one year for:~~

~~(i) Falsification, fraud, or deceit in connection with an original or renewal license or application;~~

~~(ii) Fraudulent business practices;~~

~~(iii) Fraud or inducement to commit fraud in order to obtain a driver's license; or~~

~~(iv) Failure to secure and maintain liability insurance;~~

~~(e) Suspension or denial of a license for not less than one hundred eighty days nor more than one year for:~~

~~(i) Allowing or conducting unlicensed classroom or behind the wheel instruction, except when under the direct supervision and in the presence of an approved instructor-trainer.~~

~~(ii) Failing to satisfactorily adhere to and utilize all required classroom and behind the wheel concepts;~~

~~(iii) Failing to maintain or submit student and school records as required by the department; or~~

~~(iv) Failing to submit to an inspection or technical assistance visit by the department;~~

~~(f) Suspension or denial of a license for ninety days for:~~

~~(i) Violating vehicle equipment and signage requirements;~~

~~(ii) Instructing a student who is not in possession of a valid instruction permit or driver's license;~~

~~(iii) Prohibited advertising;~~

~~(iv) Doing business or providing instruction in a prohibited or unlicensed location; or~~

~~(v) Instructing or training on a department of licensing driver license testing route;~~

~~(g) Suspension or denial of a license for no more than thirty days:~~

~~(i) For failing to display the school or instructor license or licenses, or the required minimum curriculum; or~~

~~(ii) For failing to satisfy the other conditions of these rules or of chapter 46.82 RCW.~~

~~(3) The department may stay all or any portion of the period of a license revocation, suspension, or denial for causes specified in subsections (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g) of this section, subject to such terms and conditions as shall be deemed by the department to be appropriate.~~

(4)) The original or a facsimile of each final order imposing disciplinary action that is issued to a driver training school or any of its instructors by the department shall be conspicuously displayed immediately adjacent to the driver training school's license. The final order shall be displayed for not less than the duration of the sanction period plus the next sixty days or for one year, whichever is less.

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 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 6, 2006

Barbara Sandahl, Director  
Policy and Legislative Affairs

#### NEW SECTION

**WAC 308-104-075 Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period.** The department shall suspend, cancel, or deny all driving privileges of a person who has been convicted of or determined by the department to have committed one of the prohibited practices relating to drivers' licenses listed in RCW 46.20.0921 for a period of not less than sixty consecutive days and not more than three hundred sixty-four consecutive days. For purposes of RCW 46.20.0921 (1)(e), an application for a commercial driver's license includes the application for a driver's license under RCW 46.20.091 and the application for a commercial driver's license under RCW 46.25.070.