WSR 06-20-004
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed September 21, 2006, 4:13 p.m., effective October 22, 2006]

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

Purpose: In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site.

WAC 458-20-267 Annual reports for certain tax adjustments, is a new rule incorporating provisions of chapter 1, Laws of 2003 2nd sp.s., chapters 24 and 240, Laws of 2004, and chapter 301, Laws of 2005. These provisions impose the annual reporting requirement for taking the tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries. This rule explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

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

Adopted under notice filed as WSR 06-10-093 on May 3, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: September 21, 2006.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-267 Annual reports for certain tax adjustments. (1) **Introduction.** In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. This section explains the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries. This section explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

This section contains a number of examples. These examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the report?** A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) **Tax adjustments for the aerospace manufacturing industry:**

(i) The B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts;

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified preproduction development expenditures for manufacturers and processors for hire of commercial airplanes and component parts;

(iii) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

(iv) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing superefficient airplanes;

(v) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

(vi) The B&O tax credit for property taxes and leasehold excise taxes provided by RCW 82.04.4463 for manufacturers and processors for hire of commercial airplanes and component parts.

(b) **Tax adjustments for the aluminum smelter industry:**

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.022(5) for the use of natural gas;

(c) **Tax adjustment for the electrolytic processing industry.** The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

(d) **Tax adjustment for the solar electric manufacturing industry.** The B&O tax rate for manufacturers of solar energy systems using photovoltaic modules, or silicon components of such systems provided by RCW 82.04.294.

(3) **How to file annual reports.**

(a) **Forms and formats.** A person must use forms or the on-line filing format developed by the department to complete the annual report unless a person obtains prior approval from the department to file the annual report in an alternative format. The department has developed a form that taxpayers may use to complete the report. Report forms may be obtained by downloading from the department's web site (www.dor.wa.gov). A report form may also be obtained at department district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(b) **First report.** The first report filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax adjustment. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.

(c) **Due date.** The report must be filed by March 31st following any calendar year in which any tax adjustment is taken against taxes due.

(d) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2005. By March 31, 2006, the aerospace firm must provide two annual reports, one covering calendar year 2004 and another covering calendar year 2005. If the aerospace firm continues to take the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2006, a single annual report is due on March 31, 2007, covering calendar year 2006.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 1, 2004. By March 31, 2005, the aluminum smelter must provide two annual reports, one covering calendar year 2003 and another covering calendar year 2004. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year 2005, a single annual report is due on March 31, 2006, covering calendar year 2005.

(4) **What manufacturing site(s) are included in the annual report?**

(a) There must be a separate annual report filed for each manufacturing site at which activities are conducted that qualifies for a tax adjustment.

(b) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax adjustment. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports nonqualifying activities such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities.

(i) **Which manufacturing site is included in the annual report for the aerospace manufacturing industry tax adjustments?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration ("FAA") for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(ii) **Which manufacturing site is included in the annual report for the aluminum industry tax adjustments?** The location(s) where a person who is an aluminum smelter engaging in the business of manufacturing aluminum within this state is the manufacturing site(s) included in the annual report. An "aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. A "direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than 50% owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(iii) **Which manufacturing site is included in the annual report for the electrolytic processing industry tax adjustments?** The location(s) where a person is engaged in a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process within this state is the manufacturing site(s) included in the annual report. A "chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "chlor-alkali electrolytic processing business" and "sodium chlorate electrolytic processing business" do not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville Power Administration as of June 10, 2004.

(iv) **Which manufacturing site is included in the annual report for the solar electric manufacturing industry tax adjustments?** The location(s) where a person who is manufacturing solar energy systems using photovoltaic modules, or silicon components of such systems, within this state is the manufacturing site(s) included in the annual report. A "solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity. A "photovoltaic cell" means a device that converts light directly into electricity without moving parts. A "module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. A "silicon component" is an ingredient or component part comprised of fifty percent or more solar grade silicon that is used in a solar energy system using photovoltaic modules.

(c) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto

a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(d) **Examples.**

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iii) Tacoma Rivets, located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iv) Dynamic Aerospace Composites is a company that only manufactures FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites. Dynamic Aerospace Composites can make a request to the department to consolidate its employment positions into a single annual report if the jobs located at the three manufacturing sites have equivalent employment, wages, and employer-provided health and retirement benefits.

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Because Worldwide Aerospace has no manufacturing sites in Washington state, it is not required to complete the annual report.

(5) **What jobs are included in the annual report?**

(a) The annual report covers all full-time, part-time, and temporary jobs at the manufacturing site as of December 31st of the calendar year for which an applicable tax adjustment is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located at the manufacturing site.

(b) **Examples.**

(i) XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. Its management and human resources divisions are located in an administrative office across the street from its Tacoma, WA aluminum smelter. XYZ Aluminum's annual report for its Tacoma, WA location will include the employment positions in its administrative offices because those jobs are located at the Tacoma, WA manufacturing site.

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) **How is employment detailed in the annual report?** The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

(a) Major group;
(b) Minor group;
(c) Broad occupation; and
(d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by contacting the department's special programs division or by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) **What is total employment at the manufacturing site?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax adjustment is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time or temporary employment positions on December 31st of the calendar year for which an applicable tax adjustment is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** In order for a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **Examples.** Assume these facts for the following examples. National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 am to 5:00 pm Monday thru Friday. The second shift works six hours from 6:00 pm to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project

assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

Up to $10.00 an hour;

$10.01 an hour to $15.00 an hour;

$15.01 an hour to $20.00 an hour;

$20.01 an hour to $30.00 an hour; and

$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(b) **Examples.** Assume these facts for the following examples. Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) One hundred employees classified as SOC Production Occupations are paid $12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid $17.00 an hour. One hundred employees classified as SOC Production Occupations are paid $25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid $10.01 an hour to $15.00 an hour; 50% are paid $15.01 an hour to $20.00 an hour; and 25% are paid $20.01 an hour to $30.00 an hour.

(ii) Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of $42,000; another ten employees are paid $50,000 annually; and the remaining employees are all paid over $70,000 annually. In order to report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid $20.01 an hour to $30.00 an hour and 60% are paid $30.00 an hour or more.

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive $10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a $10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid $15.01 an hour to $20.00 an hour.

(iv) Ten of the employees classified as SOC Office and Administrative Support Occupations earn $9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between $10.01 an hour to $15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least $10.50 an hour, but no more than $15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour.

(11) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Top three occupational codes of all staffing company employees; and

(c) Average duration of all staffing company employees.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) **Examples.**

(i) On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(c) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (c)(i) of this subsection, the person may consolidate the detail required in (c) through (e) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account.

In those instances where the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses and unmarried dependant children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(d) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of co-payments, co-insurance, or deductibles. Co-payments and co-insurance mean an amount specified in a medical care plan which is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(e) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(f) **Examples.**

(i) Assume the following facts for the following examples. Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(A) Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace $750 a month for each employee covered by Plan A. Enrolled employees must pay $150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a $10.00 co-payment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a $200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a $500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a $10.00 co-payment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, co-payment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a $10.00 co-payment for primary care provider services and a $200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a $10.00 co-payment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit co-payment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(B) Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace $1,000 a month for each employee covered by Plan B. Enrolled employees must pay $300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a $200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a $250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a $200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a $250 annual deductible and 20% co-insurance obligation.

(C) On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan

separately or may consolidate the detail required in (c) through (e) of this subsection for this type of medical care plan by using ranges to report the information.

(ii) Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits $500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of $2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of $500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of $2,000 and employees have 25% co-insurance obligation.

(14) **What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) **How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) **Examples.**

(i) Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(c) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated

as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(d) **Examples.**

(i) General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of $10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(A) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(B) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of $10,000 or 7% of an employee's annual compensation.

(D) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(ii) Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(A) Washington Alloys can report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys can report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(B)(I) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(II) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** Annual reports must include data for actual levels of employment for each quarter of the calendar year covered by the report. In addition, the report must identify the number of jobs affected by any employment reductions that have been publicly announced within sixty days of the date the report is submitted to the department. For an aluminum smelter, the annual report must indicate the quantity of aluminum smelted at the plant during the time period covered by the report. For an electrolytic processing business, the annual report must indicate the quantity of product produced at the plant during the time period covered by the report.

(17) **Are annual reports confidential?** Annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) **What are the consequences for failing to file a complete annual report?**

(a) If a person fails to submit a complete annual report by March 31st, the department will declare the amount of taxes against which the tax adjustment was taken during the previous calendar year to be immediately due and payable. Interest, but not penalties, will be assessed retroactively to the date the tax adjustment was taken and accrues until taxes for which the tax adjustment was taken are repaid. Interest will be assessed at the rate provided for delinquent excise taxes as provided under chapter 82.32 RCW.

(b) **Complete annual report.** An annual report is complete if:

(i) The annual report is filed on the form required by this section; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this section.

The answer "varied," "various," or "please contact for information" is not a good faith response to a question.

WSR 06-20-005
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed September 21, 2006, 4:15 p.m., effective October 22, 2006]

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

Purpose: WAC 458-16-180 explains the property tax exemption available under RCW 84.36.020 to public burying grounds and cemeteries. The rule was updated so that it more adequately informs owners of public burying grounds and cemeteries about their eligibility to receive a property tax exemption under RCW 84.36.020.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-180 Cemeteries.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 06-14-091 on July 5, 2006.

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

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

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

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

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

Date Adopted: September 21, 2006.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-180 Public burying grounds or cemeteries. (1) **Introduction.** This section explains the property tax exemption available under ((~~the provisions of~~)) RCW 84.36.020 to public burying grounds or cemeteries.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) ((~~"Burial" means the placement of uncremated human remains in the ground.~~

~~(b) "Dedicated" means a written declaration of dedication of the property to which the exemption is to be applied has been filed with the county auditor in the county where the property is located, dedicating the property exclusively as a public burying ground or cemetery.~~

~~(c) "Entombment" means the placement of uncremated human remains in a crypt in a mausoleum.~~

~~(d) "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for a public burying ground or cemetery.~~

~~(e) "Inurnment" means placing cremated remains in an urn or other container.~~

~~(f) "Necessary administration and maintenance" means those administrative and maintenance functions necessary to administer and maintain the cemetery and the necessity of which would be nonexistent but for the presence of the cemetery.~~

~~(g) "Public burying grounds or cemeteries" means places used, and dedicated, for the interment of human remains, and also includes:~~

~~(i) An "abandoned cemetery," "historical cemetery," and "historic grave" as defined in chapter 68.60 RCW;~~

~~(ii) Indian graves as protected under chapter 27.44 RCW; and~~

~~(iii) Nonprofit cemeteries owned or operated by any recognized religious denomination or any of its churches that qualifies for a property tax exemption under the provisions relating to churches under the provisions of RCW 84.36.020.~~

~~(3) **Exemption.** The following property shall be exempt from taxation when used without discrimination as to race, color, national origin, or ancestry:~~

~~(a) All lands used, or to the extent used, exclusively for public burying grounds or cemeteries.~~

~~(b) All buildings required for and used, or to the extent used, exclusively for necessary administration and maintenance of public burying grounds or cemeteries including, but not limited to, the groundskeeping or maintenance building and the administration building. This exemption does not generally include a residential building; however, a caretaker's residence may be exempt if the following conditions are met:~~

~~(i) The caretaker's duties include regular surveillance and patrolling of the property;~~

~~(ii) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;~~

~~(iii) The caretaker, or the caretaker's substitute, is required on the premises at all hours the cemetery is closed or at least during the time when vandalism or other damage is most likely to occur; and~~

~~(iv) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created the caretaker's presence will not be considered as rent.~~

~~(4) **Applications and annual certifications.** Nonprofit cemetery corporations or associations are only required to file an initial application for exemption as described in WAC 458-16-110. For profit cemetery corporations or associations shall file renewal applications and annual certifications as required by WAC 458-16-110.~~)) "Burial" means the placement of human remains in a grave.

(b) "Cemetery" means any one, or a combination of more than one, of the following in a place actually used, or to the extent actually used, for the placement of human remains and dedicated for cemetery purposes:

(i) A "burial park," for earth interments, that is a tract of land actually used for the burial of human remains in the ground;

(ii) A "mausoleum," for crypt interments, that is a building or structure for the entombment of human remains in crypts, which are spaces in which human remains are placed; and

(iii) A "columbarium," for permanent niche interments, that is a structure, room, or other space in a building or structure containing niches in which cremated human remains are placed.

(c) "Cremation" or "cremated" means the reduction of human remains to bone fragments in a crematory by means of incineration. The end products of cremation are "cremated human remains."

(d) "Crematory" means a building or area of a building that houses one or more cremation chambers actually used for the cremation of human remains.

(e) "Crematory and columbarium" means a building or structure containing both a crematory and a columbarium.

(f) "Crypt" means a space in a mausoleum for the placement of human remains.

(g) "Dedicated" means a written declaration dedicating the property exclusively as a public burying ground or for cemetery purposes was filed with the auditor of the county in which the property is located.

(h) "Entombment" means the placement of human remains in a crypt.

(i) "Grave" means a space of ground in a burial park actually used, or to the extent actually used, for burials.

(j) "Human remains" or "remains" means the body of a deceased person and includes cremated human remains.

(k) "Interment" means the placement of human remains in a cemetery.

(l) "Inurnment" or "inuring" means placing cremated human remains in a cemetery.

(m) "Necessary administration and maintenance" means those functions necessary to administer and maintain the cemetery or public burying grounds and the necessity of which would be nonexistent but for the presence of the cemetery or public burying grounds.

(n) "Public burying grounds" means places actually used and dedicated for the interment or inurnment of human remains, and also includes:

(i) An "abandoned cemetery," "historical cemetery," and "historic grave" as defined in chapter 68.60 RCW (see RCW 68.60.010);

(ii) Native Indian burial grounds and historic graves protected under chapter 27.44 RCW; and

(iii) Nonprofit cemeteries owned or operated by any recognized religious denomination or any of its churches that qualifies for a property tax exemption as a church under RCW 84.36.020.

(o) "Scattering garden" means a designated area in a cemetery for the scattering of cremated human remains in any lawful manner.

(3) **Exemption.** There are several types of public burying grounds or cemeteries that are exempt from property tax under RCW 84.36.020. Public burying grounds or cemeteries operated by both nonprofit and for profit organizations are eligible for this exemption. Even though Title 68 RCW mentions the exemption of cemeteries from taxation, that portion of the Revised Code of Washington relates generally to the operation of cemeteries. Qualification for an exemption from property taxation is controlled by the specific provisions of RCW 84.36.020. The following property is exempt from taxation when used without discrimination as to race, color, national origin, or ancestry:

(a) All lands actually used, or to the extent actually used, exclusively for public burying grounds or cemeteries.

(b) All buildings and personal property required for and actually used, or to the extent actually used, exclusively for the necessary administration and maintenance of public burying grounds or cemeteries. Buildings and personal property that may be exempt include an/a:

(i) Administration or office building;

(ii) Art and statuary, in place, that decorate or enhance the esthetics of the public burying ground or cemetery;

(iii) Burial park;

(iv) Columbarium;

(v) Grounds keeping or maintenance building;

(vi) Items used exclusively for the general upkeep and operation of the public burying ground or cemetery. These items may include, but are not limited to, lawn mowers, unlicensed mobile equipment, tools, machinery, office equipment, and equipment used to dig graves;

(vii) Mausoleum; and

(viii) Scattering garden.

(4) **Caretaker's on-site residence - possibly exempt.** This exemption does not generally include a residential building. However, a caretaker's residence may be exempt if all of the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The presence of the caretaker, or the caretaker's substitute, is required on the premises at all hours the cemetery is closed or at least during times when vandalism or other damage is most likely to occur; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

(5) **What property is not exempt?** The exemption conferred by RCW 84.36.020 does not extend to the following:

(a) A chapel, funeral home, or mortuary in which funeral services are conducted;

(b) A crematory;

(c) Equipment and supplies of any funeral home or mortuary located on or adjacent to the exempt property of a public burying ground or cemetery;

(d) Statuary, grave markers, headstones, and other items for sale; and

(e) Items used to promote sales (i.e., samples or displays) of graves, urns, caskets, headstones, and other items generally sold in connection with a public burying ground, cemetery, funeral, cremation, grave, or burial site.

(6) **Applications and annual declarations.** Nonprofit cemetery corporations or associations are only required to file an initial application for exemption as described in WAC 458-16-110. For profit cemetery corporations or associations must file renewal applications and annual declarations as required by WAC 458-16-110.

WSR 06-20-034
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 06-02—Filed September 25, 2006, 11:55 a.m., effective October 26, 2006]

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

Purpose: The purpose of this rule making is to establish new oil spill prevention and response standards for facilities and vessels who transfer oil on or over the waters of the state, as mandated by the legislature. This rule making will:

- Adopt a new regulation (chapter 173-180 WAC) that consolidates four existing facility oil spill prevention rules (chapters 173-180A, 173-180B, 173-180C, and 173-180D WAC), recategorizes facilities into four distinct classes, and adds requirements for prebooming bulk oil transfers, alternative measures to be used when prebooming is not safe and effective, and advanced notice of transfer.
- Adopt a new regulation (chapter 173-184 WAC) to set standards for delivering vessels for prebooming bulk oil transfers, alternative measures to be used when prebooming is not safe and effective, and advanced notice of transfer.

The department of ecology intends to repeal chapters 173-180A, 173-180B, 173-180C, and 173-180D WAC at a later date.

Statutory Authority for Adoption: RCW 88.46.160 and 88.46.165 and chapter 90.56 RCW.

Adopted under notice filed as WSR 06-12-119 on June 7, 2006.

Changes Other than Editing from Proposed to Adopted Version: Chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements, were originally proposed to be incorporated into existing chapter 317-40 WAC. Due to comments received from the United States Coast Guard and a recent Massachusetts federal court decision, ecology decided to focus on advanced notice and oil transfer containment requirements and remove proposed rules that were the subject of concern. Thus chapter 317-40 WAC was not changed, and instead portions of the proposed rule were moved to new chapter 173-184 WAC. For chapter 173-180 WAC, Facility oil handling standards, the following are the major changes: Boom requirements for Rate A transfers was changed from 4 x the largest vessel to 4 x the largest vessel or 2000 feet whichever is less, and the schedule dates for complying with prebooming and alternative compliance were extended. See the concise explanatory statement for chapters 173-180 and 173-184 WAC, section II describe differences between proposed and final rule language for additional information.

A final cost-benefit analysis is available by contacting Washington State Department of Ecology, Attn: Paul O'Brien, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7390, fax (360) 407-7288, e-mail oiltransferrule@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 65, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 66, Amended 1, Repealed 0.

Date Adopted: September 25, 2006.

Jay J. Manning
Director

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 all classes of oil handling facilities. This includes transfer operations involving any size nonrecreational vessel.

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 and 88.46.165 provide 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) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(4) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil discharged onto the surface of the water.

(5) "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.

(6) "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.

(7) "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.

(8) "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 Class 1 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.

(9) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(10) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of 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: Boatyard, 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) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installations that transfer 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; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(12) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(13) "Director" means the director of the department of ecology.

(14) "Directly impact" means without treatment.

(15) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(16) "Ecology" means the department of ecology.

(17) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(18) "Innage" means the difference from the surface of the liquid to the tank bottom.

(19) "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.

(20) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(21) "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 302.4 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.

(22) "Offshore facility" means any class 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 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) "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.

(26) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(27) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(28) "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 if not designated, the person with overall responsibility for oil transfer operations.

(29) "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.

(30) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(31) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved, and if leased, rented, or chartered to another for recreational use, is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(32) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

(33) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(34) "Spill" means an unauthorized discharge of oil into the waters of the state.

(35) "State" means the state of Washington.

(36) "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.

(37) "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.

(38) "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.

(39) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(40) "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.

(41) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(42) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

(43) "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 chapter 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 90.56.050, 90.56.410, and 88.46.167.

(2) To ensure compliance with this chapter, ecology may ask for the following during inspections and the facility is required to:

(a) Provide proof of compliance by producing all required records and documents;

(b) Provide proof of compliance of the ability to meet the spill prevention equipment and procedures of this chapter;

(c) Provide proof of compliance of the ability to meet the transfer containment and recovery standards in WAC 173-180-221 and 173-180-222; and

(d) Provide proof of training and certification, if applicable.

(3) Ecology will provide an inspection report to the facility at the conclusion of the inspection.

NEW SECTION

WAC 173-180-040 Recordkeeping. (1) Records required by this chapter 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. Inspection, maintenance, and repair records for pumps, valves, manifolds, and other ancillary equipment used in oil transfers must be kept for ten years.

(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 from a facility 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 coordinate with the Coast Guard to:

(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) Facility 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 or spilled into the water or on the shoreline adjoining the transfer area;

(b) Discharged into oil spill containment or on the vessel deck.

(2) The facility PIC must make notifications as required in RCW 90.56.280.

(3) The facility PIC may resume an oil transfer once the following conditions are met:

(a) The source of the spill is controlled, contained, and a proper response is underway;

(b) The PICs must agree there is no further threat of a spill.

(4) After a spill to water, the facility PIC may resume a transfer if:

(a) The conditions in subsection (3) of this section are met; and

(b) Approval is received from the state on-scene coordinator in conjunction 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 forty 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 a PIC in writing.

A designated PIC must supervise all oil transfer operations.

(2) All Class 1 and 2 facility personnel designated as a PIC must have completed a training and certification program established by the operator and approved under Part E of this chapter.

(3) All personnel assigned responsibilities related to an oil transfer operation must be qualified to perform those duties as required by federal law or rule, or both.

(4) Each PIC must carry or have readily available evidence of designation as a PIC when engaged in an oil transfer operation.

(5) All Class 1 and 2 personnel involved in a transfer must carry or have readily available evidence of completion of the facility's training and certification program.

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 Equivalent compliance plan. (1) Any facility may submit a proposal for equivalent compliance for the alternative measures required in WAC 173-180-221 and 173-180-222. Any facility who submits a proposal must preboom or meet the applicable alternative measures requirements until the equivalent compliance plan is approved.

(a) Rate A deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-221(7).

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-222(2).

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking equivalent compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the equivalent proposal;

(d) A detailed description of the equivalent 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 level of protection as compared to the requirements in this chapter. This 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.

(3) **Submission timeline of proposed equivalent compliance plan:** The facility must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under the section.

(a) Ecology will make the proposal available for a thirty-calendar-day public review and comment period.

(b) 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.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the equivalent compliance proposal with a letter approving, conditionally approving, or disapproving the proposal.

(d) The approval will be valid for no more than five years from the date on the approval letter.

(4) **Approval of proposed equivalent compliance plan:** Ecology may approve the equivalent compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The equivalent compliance proposal is complete and accurate; and

(b) The equivalent compliance proposal would provide an equivalent or greater level of environmental protection as the alternative measures required in WAC 173-180-221 and 173-180-222.

(5) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.

(6) 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
Equivalent Compliance Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent 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) The general sections of Part B apply 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.

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) Train all employees with oil transfer duties within ninety calendar days of the date of hire. No employee may be in charge of an oil transfer operation at the Class 4 facility without proper training;

(c) 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 location 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 88.46.165.

(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
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 one hundred twenty calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this chapter.

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 of more than one hundred gallons 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 ecol-

ogy 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 and the vessel's Lloyds Registry/International Maritime Organization (LR/IMO) number 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 or barrels; 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 that ecology established, by e-mail, or by 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 requirements. (1) These standards apply to all oil transfers that involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(2) The deliverer must first determine the rate at which oil is to be transferred and then follow the applicable standards outlined in this chapter:

(a) Rate A means oil transfer operations at a rate over five hundred gallons per minute. Rate A requirements are found in WAC 173-180-221.

(b) Rate B means oil transfer operations at a rate of five hundred gallons per minute or less. Rate B requirements are found in WAC 173-180-222.

(3) To meet the requirements of this chapter, the deliverer must have personnel trained in the proper use and maintenance of boom and recovery equipment.

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for the environmental conditions encountered in the transfer area(s) based on the manufacturers' specifications.

NEW SECTION

WAC 173-180-221 Rate A prebooming requirements and Rate A alternative measures requirements. This section generally applies to delivering facilities; however, any Class 1 facility receiving oil from a Rate A delivering vessel must provide the safe and effective threshold values to the vessel.

(1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measure requirements found in subsection (7) of this section.

(2) The determination of safe and effective must be made prior to starting a transfer or, if conditions change during a transfer. To make this determination, the deliverer must use the safe and effective threshold values found in their operations manual. Safe and effective threshold values are determined using the safe and effective threshold determination report - see WAC 173-180-224.

(3) When it is not safe and effective, or when conditions develop during a preboomed transfer that require removal of the boom, the Rate A deliverer must report this finding to ecology and meet the alternative measures found in subsection (7) of this section. The *Ecology Boom Reporting Form* must be used for this purpose, and submitted by e-mail or facsimile prior to the transfer and/or immediately when conditions have changed.

(4) If multiple oil transfers are occurring simultaneously with a single vessel, and one product transferred is not appropriate to preboom, then that portion of the transfer where it is unsuitable to preboom must use the alternative measures found in subsection (7) of this section.

(5) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(6) **Rate A prebooming requirements.**

(a) In order to preboom transfers, the deliverer must have, prior to the transfer, access to boom four times the length of the largest vessel involved in the transfer or two thousand feet, whichever is less.

The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(i) The boom must be deployed with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(ii) The deliverer must periodically check the boom positioning and adjust as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(b) In addition to prebooming, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) For preboomed transfers, within one hour of being made aware of a spill, the deliverer must be able to complete deployment of the remaining boom, should it be necessary for containment, protection, or recovery purposes.

(7) **Rate A alternative measures.** Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements.

(a) To meet the alternative measures requirements the deliverer must have access to boom four times the length of the largest vessel involved in the transfer, or two thousand feet, whichever is less.

(b) In addition to the boom, the deliverer must have the following available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) The deliverer must have the ability to safely track the spill in low visibility conditions. The tracking system must be on-scene within thirty minutes of being made aware of a spill.

(d) For alternative measures: 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 deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(e) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have the following:

(i) Additional boom four times the length of the largest vessel involved in the transfer, or two thousand feet, whichever is less, available for containment, protection, or recovery; and

(ii) A skimming system must be on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

NEW SECTION

WAC 173-180-222 Rate B prebooming requirements and Rate B alternative measures requirements. (1) **Rate B prebooming requirements.** The Rate B deliverer must choose to meet either the following prebooming requirements in this section or the alternative measures found in subsection (2) of this section. If prebooming is chosen, then:

(a) Prior to starting the oil transfer operation, the deliverer must deploy boom so that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(i) The deliverer must deploy the boom with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;

(ii) The deliverer must periodically check boom positioning and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For prebooming: 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.

(2) **Rate B alternative measures requirements.** If a Rate B chooses alternative measures, then:

(a) Prior to starting the oil transfer operation, the deliverer must 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 deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For alternative measures: 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.

(d) For alternative measures: 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 173-180-223 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. (1) Any class facility conducting Rate A transfers must meet all the applicable requirements in WAC 173-180-220 and 173-180-221 except WAC 173-180-221(6) within one hundred twenty calendar days of the effective date of this chapter. All Rate A transfers must meet the requirements of WAC 173-180-221(6) within three hundred sixty-five calendar days from the effective date of the chapter.

(2) Any class facility conducting Rate B transfers must meet all the requirements of WAC 173-180-220 and 173-180-222 within one hundred twenty calendar days from the effective date of this chapter.

NEW SECTION

WAC 173-180-224 Safe and effective threshold determination report. (1) **Report requirements.** The report must include at a minimum the following, in the order presented:

(a) Cover sheet with name of company submitting the report and point of contact.

(b) Table of contents including supporting documents and appendices.

(c) Summary of safe and effective threshold values.

(d) The body of the report must include the following:

(i) The information used to support these values which must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations.

(ii) 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.

(iii) The facility must provide a detailed analysis of the proposed threshold values for the transfer location including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected;

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(2) **Submittal requirements.** Rate A deliverers must submit a safe and effective threshold determination report to ecology for review and approval for each location at which a Rate A transfer occurs. One paper and one electronic copy of the safe and effective threshold determination report must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
300 Desmond Drive
Lacey, WA 98503

(3) **Review and approval process.**

(a) When reviewing threshold determination reports, ecology must consider the following:

(i) Personnel safety;

(ii) Operating environment of the transfer location(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.

(b) Ecology will make the report available for a thirty calendar day public review and comment period.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the report with a letter approving, conditionally approving, or disapproving the report.

(d) The approval of this report will be valid for no more than five years from the date on the approval letter.

(e) Ecology may require a new review and approval process for this report after a spill by the facility.

(4) **Compliance and submittal schedule.**

(a) The safe and effective threshold determination report must be submitted one hundred eighty calendar days after the effective date of this chapter.

(b) For facilities starting operation after the effective date of this chapter, the report must be submitted at least one hundred twenty calendar days prior to the first oil transfer operation.

NEW SECTION

WAC 173-180-225 Providing safe vessel access. A Class 1 or 3 facility must provide safe access for personnel if the vessel cannot provide the safe access.

(1) The access must be secured both top and bottom to prevent movement of the access platform.

(2) The entire ladder and the portion of the facility and ship's deck where access is provided must be illuminated during low light or low visibility situations and without glare to the persons using the access.

(3) In the event weather conditions make the access unsafe, the PICs may elect to use radio communication.

NEW SECTION

WAC 173-180-230 Preloading or cargo transfer plan requirement. Prior to any oil transfer, a transfer plan must be filled out and discussed between the delivering and receiving PICs. A facility must not begin a transfer until this plan has been discussed during the pretransfer conference described in WAC 173-180-235. The plan must, at a minimum, include:

(1) Identification, location and capacity of the vessel's tanks receiving oil;

(2) Level and type of liquid in all bunker or cargo oil 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) The facility or vessel's procedures to regularly monitor all receiving tank levels and valve alignments during the transfer operation.

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. If the PICs determine weather conditions prevent safe access, PICs may communicate via 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) During a pretransfer conference that involves a covered vessel, the point-of-transfer watch and deck-rover watch must be identified to PICs.

(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.

NEW SECTION

WAC 173-180-240 Communications. (1) The facility 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 facility 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 sixty seconds for any facility or portion of the facility that started transferring oil on or before November 1, 1980.

(b) Within thirty seconds for any facility or portion of the facility that transfers oil after November 1, 1980.

(4) Both PICs must be capable of ordering or activating an 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 with 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.

(5) All operations manuals will be valid for no more than five years from the date on the approval letter. Ecology will review the facility operations manual to ensure compliance with this chapter.

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 nonrecreational 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) Description of the facility's requirements or actions taken regarding unexpected weather and sea conditions and the threshold values developed by 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 communicating with the vessel and shutting down the oil transfer should weather or seas exceed threshold values.

(c) Safe and effective threshold determination. The threshold values which personnel will use to determine when a facility will not preboom under Part B of this chapter, must be in the operations manual and easily found by the PIC. 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. See WAC 173-180-224.

(d) Facility emergency procedures, at a minimum:

(i) Procedures for reporting spills to the appropriate agencies and initial response actions taken in the event of an oil discharge;

(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; and

(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.

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 one hundred twenty 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 calendar 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 notification 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 submits a letter requesting that ecology review the operations manual already in ecology's possession.

(3) 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) Providing 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 the safe and effective threshold values as identified in the safe and effective threshold determination report. These values must be for each location where a Rate A transfer occurs. See WAC 173-180-224 for requirements for this report.

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 one hundred twenty 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 calendar 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 distribute 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.

Class 1 and 2 facilities training and certification program will be valid for no more than five years from the date on the approval letter. Ecology will review Class 1 and 2 facilities training and certification program to ensure compliance with 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) Operating procedures and checklists specific to trainee's job function;

(c) Problem assessment, including recognition of human factor risks and how they can be minimized;

(d) Awareness of preventative maintenance procedures;

(e) Awareness of local environmental sensitivity and oil spill impacts;

(f) Major components of facility's oil spill prevention plan;

(g) Major components of facility's operations manual;

(h) Major components of facility's oil spill contingency plan;

(i) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(j) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(k) Routine and emergency communications procedures;

(l) Overview of applicable oil spill prevention and response laws and regulations; and

(m) 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) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(i) Overview of applicable oil spill prevention and response laws and regulations; and

(j) 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.

(8) All certified personnel must carry a proof of certification during oil transfer operations.

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 approved date of the operations manual.

(b) Must train and certify all personnel under the facility's modified training and certification program within ninety calendar days of the approved date of the operations manual.

(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 calendar days from the 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) Operating procedures and checklists specific to trainee's job function;

(c) Preventative maintenance procedures;

(d) Awareness of oil spill impacts;

(e) Major components of facility's operations manual;

(f) Major components of the facility's response plan;

(g) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(h) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(i) Routine and emergency communications procedures;

(j) Overview of applicable oil spill response laws and regulations; and

(k) 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) 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 approved date of the operations manual.

(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 approved date of the operations manual.

(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 calendar days prior to the first oil transfer operation.

(b) Must train and certify all key supervisory and operations personnel within ninety calendar days prior to 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;

(e) All certified personnel must carry proof of certification during oil transfer operations;

(f) 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 overpressure 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; identification 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 and approval. (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 determines that a plan is incomplete, the submitter must be notified of deficiencies. The review period will not begin until ecology receives a complete plan.

All prevention plans will be valid for no more than five years from the date on the approval letter. Ecology will review prevention plans to ensure compliance with this chapter.

(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 require a new review and approval process for a prevention 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.

The Class 1 facility may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

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.

The Class 2 facility may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

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 calendar 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 calendar 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
300 Desmond Drive
Lacey, WA 98503

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 of 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 173-180-222.
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.

Chapter 173-184 WAC

VESSEL OIL TRANSFER ADVANCE NOTICE AND CONTAINMENT REQUIREMENTS

PART A: GENERAL REQUIREMENTS

NEW SECTION

WAC 173-184-010 Applicability of this chapter. (1) Except as provided in subsection (2) of this section, this chapter applies to all vessels delivering oil in bulk on or over the waters of the state to the following persons:

(a) Tank vessels;

(b) Cargo vessels;

(c) Passenger vessels;

(d) Any other nonrecreational vessels; or

(e) Class 1, 2, and 3 facilities.

(2) This chapter does not apply to:

(a) An oil spill recovery vessel that is engaged in spill response activities;

(b) Emergency lightering of vessels to mitigate further damage;

(c) A vessel's internal oil transfers;

(d) Vacuum trucks used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels intended for shoreside disposal;

(e) Public vessels; and

(f) Fuel transfers from tug to barge for operation of installed machinery.

NEW SECTION

WAC 173-184-015 Purpose. (1) This chapter establishes minimum standards for safe oil transfers to meet a zero spill goal established by the legislature. This chapter emphasizes:

(a) Using a scaled approach that sets standards for safe oil transfers to protect people and the environment;

(b) That it is the obligation of vessel and facility owners and operators to adopt company policies that improve the safety of oil transfers;

(c) Minimizing the size and impacts of those oil spills which do occur.

(2) A second purpose of this chapter is the further implementation of chapter 88.46 RCW to regulate the transfer of oil on or over waters of the state.

NEW SECTION

WAC 173-184-020 Authority. (1) The legislature granted ecology the authority to adopt and enforce these rules regulating the transfer of oil on or over waters of the state under RCW 88.46.160 and 88.46.165.

(2) The owner or operator of any vessel involved in an oil transfer over state waters must allow ecology access for the purposes of ensuring compliance with the requirements of this chapter.

NEW SECTION

WAC 173-184-025 Definitions. Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Boatyard" means a class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(2) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.

(3) "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.

(4) "Bunkering" means a bulk oil transfer operation to replenish a self-propelled vessel with fuel or lubricating oil.

(5) "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.

(6) "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.

(7) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(8) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of 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: Boatyard, 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.

(9) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet and other fueling installations that 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; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(10) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(12) "Ecology" means the department of ecology.

(13) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(14) "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.

(15) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(16) "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 302.4 of 40 CFR Part 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.

(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;

(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; 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.

(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) "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 if not designated, the person with overall responsibility for oil transfer operations.

(21) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(22) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(23) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved and if leased, rented, or chartered to another for recreational use is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(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 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.

(28) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(29) "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.

NEW SECTION

WAC 173-184-030 Inspections. (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with chapter 88.46 RCW.

(2) To ensure compliance with this chapter, ecology may ask for documents required by this chapter.

(3) Ecology will provide an inspection report to the vessel at the conclusion of the inspection.

NEW SECTION

WAC 173-184-035 Drill credit. The owner or operator may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

NEW SECTION

WAC 173-184-040 Noncompliance. Any violation of this chapter may be subject to enforcement and penalty sanctions of chapter 88.46 RCW.

NEW SECTION

WAC 173-184-045 Owner and operator responsibilities. Owners and operators of delivering vessels conducting oil transfer operations must ensure that the requirements in this chapter are implemented and followed.

NEW SECTION

WAC 173-184-050 Severability. If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

PART B: OIL TRANSFER REQUIREMENTS FOR ALL DELIVERING VESSELS

NEW SECTION

WAC 173-184-100 Advance notice of transfer. (1) The delivering vessel (or designee) involved in an oil transfer of more than one hundred gallons must provide prior notice of the oil transfer to ecology. The notice must be provided in the time frame set forth by the applicable Coast Guard captain of the port.

(2) The notice of transfer must be submitted to ecology on the Advanced Notice of Transfer form provided by ecology, a facsimile, or an equivalent form that contains the following information:

(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 class 1, 2, or 3 facility involved in the oil transfer, including Lloyd's Register/International Maritime Organization number 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 or barrels; 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, by e-mail, or by facsimile. The notification form and contact information are found on ecology's web site:

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.

NEW SECTION

WAC 173-184-105 Equivalent compliance plan. (1) Any owner or operator may submit a proposal for equivalent compliance for the alternative measures required in WAC 173-184-115 and 173-184-120. Any owner or operator who submits a proposal must preboom or meet the alternative measures until the equivalent compliance plan is approved.

(a) Rate A (see WAC 173-184-110) deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-184-115(7).

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-184-120(2).

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking equivalent compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the equivalent proposal;

(d) A detailed description of the equivalent 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 level of protection as compared to the requirements in this chapter. This includes:

(i) Methodology of the analysis;

(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information; and

(iii) Technical feasibility of proposal versus current requirements.

(3) Submission timeline of proposed equivalent compliance plan. The owner or operator must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under this section.

(a) Ecology will make the proposal available for a thirty-calendar-day public review and comment period;

(b) 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;

(c) Ecology will respond to the owner or operator within ninety calendar days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal; and

(d) The approval will be valid for no more than five years from the date on the approval letter.

(4) Approval of proposed equivalent compliance plan. Ecology may approve the equivalent compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The equivalent compliance proposal is complete and accurate; and

(b) The equivalent compliance proposal would provide an equivalent or greater level of environmental protection as the alternative measures required in WAC 173-184-115 and 173-184-120.

(5) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.

(6) 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
Equivalent Compliance Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent Compliance Review
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-184-110 Transfer containment and recovery requirements. (1) These standards apply to all oil transfers that involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to vessels delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(2) The deliverer must first determine the rate at which oil is to be transferred and then follow the applicable standards outlined in this chapter:

(a) Rate A: Oil transfer operations at a rate over five hundred gallons per minute. Rate A requirements are found in WAC 173-184-115.

(b) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less. Rate B requirements are found in WAC 173-184-120.

(3) To meet the requirements of this chapter, the deliverer must have personnel trained in the proper use and maintenance of boom and recovery equipment.

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for the environmental conditions encountered in the transfer area based on the manufacturer's specifications.

NEW SECTION

WAC 173-184-115 Rate A prebooming and Rate A alternative measures requirements. (1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measure requirements found in subsection (7) of this section.

(2) The determination of safe and effective must be made prior to starting a transfer, or if conditions change, during a transfer. This safe and effective determination must use the following threshold values:

(a) Transfers at a class 1 facility must use the class 1 facility's values found in the facility's operations manual - see WAC 173-180-420.

(b) Transfers that do not occur at class 1 facilities must use the values found in the vessel's approved report submitted in accordance with WAC 173-184-130, the Safe and effective threshold determination report.

(3) When it is not safe and effective or when conditions develop during a preboomed transfer which requires removal of the boom, the Rate A deliverer must report this finding to ecology and meet the alternative measures found in subsection (7) of this section. The Ecology Boom Reporting form must be used for this purpose, and submitted by e-mail or facsimile prior to the transfer and/or immediately when conditions have changed.

(4) If multiple oil transfers are occurring simultaneously with a single vessel and one product transferred is not appropriate to preboom, then that portion of the transfer where it is unsuitable to preboom must meet the alternative measures found in subsection (7) of this section.

(5) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(6) Rate A prebooming requirements.

(a) In order to preboom transfers, the deliverer must have access to boom four times the length of the largest vessel involved in the transfer or two thousand feet, whichever is less. The deliverer must deploy the boom such that it 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 that provides for maximum containment of any oil spilled.

(i) The boom must be deployed with a minimum stand-off of five feet away from the sides of a vessel measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(ii) The deliverer must 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.

(b) In addition to prebooming, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) For preboomed transfers: Within one hour of being made aware of a spill the deliverer must be able to complete deployment of the remaining boom should it be necessary for containment, protection, or recovery purposes.

(7) Rate A alternative measures. Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements:

(a) To meet the alternative measures requirements the deliverer must have access to boom four times the length of the largest vessel involved in the transfer or two thousand feet, whichever is less.

(b) In addition to the boom, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) The deliverer must have the ability to safely track an oil spill in low visibility conditions. The tracking system must be on-scene within thirty minutes of being made aware of the spill.

(d) For alternative measures: 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 that provides for maximum containment of any oil spilled.

(e) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have the following:

(i) Additional boom four times the length of the largest vessel involved in the transfer or two thousand feet, whichever is less, available for containment, protection, or recovery; and

(ii) A skimming system must be on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

NEW SECTION

WAC 173-184-120 Rate B prebooming and alternative measures requirements. (1) Rate B prebooming requirements. The Rate B deliverer must choose to meet either the following prebooming requirements or the alternative measures found in subsection (2) of this section. If prebooming is chosen then:

(a) Prior to starting the oil transfer operation the deliverer must deploy boom so that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(i) The deliverer must deploy the boom with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;

(ii) The deliverer must periodically check boom positioning and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For prebooming: 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.

(2) The Rate B alternative measures requirements. If a Rate B deliverer chooses alternative measures, then:

(a) Prior to starting the oil transfer operation the deliverer must 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 deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For alternative measures: 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.

(d) For alternative measures: 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 173-184-125 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. (1) Any delivering vessel conducting Rate A transfers must meet all the applicable requirements in WAC 173-184-110 and 173-184-115 except WAC 173-184-115(6) within one hundred twenty calendar days of the effective date of this chapter.

(2) All Rate A transfers must meet the requirements of WAC 173-184-115(6) within three hundred sixty-five calendar days from the effective date of the chapter.

(3) Any delivering vessel conducting Rate B transfers must meet all the applicable requirements in WAC 173-184-110 and 173-184-120 within one hundred twenty calendar days from the effective date of this chapter.

NEW SECTION

WAC 173-184-130 Safe and effective threshold determination report. This section applies to delivering vessels conducting Rate A transfers at locations other than class 1 facilities.

(1) **Report requirements.** The report must include, at a minimum, the following in the order presented:

(a) Cover sheet with name of company submitting the report and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Summary of safe and effective threshold values; and

(d) The body of the report must include the following:

(i) Information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations; and

(ii) 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; and

(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.

(iii) The owner or operators must provide a detailed analysis of the proposed threshold values for the transfer location including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected; and

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(2) **Submittal requirements.** Owners or operators of delivering vessels that conduct Rate A transfers must submit a report to ecology for review and approval for each location at which a Rate A transfer occurs.

One paper and one electronic copy of the threshold determination report and appendices must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Threshold Determination Report
P.O. Box 47600
Olympia, WA 98504-7600

(3) **Review and approval process.**

(a) When reviewing threshold determination reports, ecology must consider the following:

(i) Personnel safety;

(ii) Operating environment of the transfer location(s) such as site-specific meteorological, water current velocity, and other monitoring data to support the threshold 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.

(b) Ecology will make the report available for a thirty-calendar-day public review and comment period.

(c) Ecology will respond to the owner or operator within ninety calendar days of receipt of the threshold determination report with a letter approving, conditionally approving, or disapproving the report.

(d) The approval of this report will be valid for no more than five years from the date on the approval letter.

(e) Ecology may require a new review and approval process for this report after a spill by the vessel.

(4) **Compliance and submittal schedule.**

(a) Safe and effective threshold determination report must be submitted within one hundred eighty calendar days after the effective date of this chapter.

(b) Rate A deliverers that begin operating in Washington waters after the effective date of this chapter must submit the report at least one hundred twenty calendar days prior to the first oil transfer operation.

WSR 06-20-035
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 00-03—Filed September 25, 2006, 11:56 a.m., effective October 26, 2006]

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

Purpose: In addition to meeting the intent of the law and actively involving the community in this rule-making process, ecology established four general goals for this rule process: (1) Combine the facility and vessel preparedness requirements into one rule; (2) move ecology's planning standards and drill program from guidance into the rule; (3) identify and address gaps in the current rule/preparedness system; and (4) maximize the effectiveness of the existing preparedness system. This rule making will adopt a new rule, chapter 173-182 WAC, Oil spill contingency planning. This new chapter will replace the following existing chapters on oil spill contingency planning, chapters 173-181 and 317-10 WAC. Ecology plans to repeal these existing chapters at a later date.

Statutory Authority for Adoption: Chapters 88.46 and 90.56 RCW.

Other Authority: Chapter 90.48 RCW.

Adopted under notice filed as WSR 06-12-120 on June 7, 2006.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received on the draft, the following changes were made from the proposed to the adopted version of the rule: Definitions were added to clarify requirements; clarified roles and liability of responsible parties and umbrella plan holders; reduced from three to two the number of plans required to be submitted for review and approval; clarified in the binding agreement that plan holders shall commit to immediate responses in Washington; changed the number of primary and alternate names to be provided for a spill management team; increased the timeframe for nondedicated workboats from twelve to forty-eight hours; clarified our intent for aerial surveillance to support spill responses; increased the amount of storage that inland operators can claim as shore side storage; clarified the intent of response systems and their effective daily recovery capacity; adopted the federal standards for shoreline cleanup; clarified the ground water assessment standards recognizing that other rules exist to determine mitigation requirements; increased the time required to submit requests for drill credit for oil spills; added a requirement that ecology will notify plan holders if the approval status of responses contractors is affected due to significant changes in readiness. For more details on these changes please see the concise explanatory statement prepared by the agency.

A final cost-benefit analysis is available by contacting Cathy Caruthers, Department of Ecology, P.O. Box 47600, Lacey, WA 98504, phone (360) 407-6564, fax (360) 407-7288, e-mail caca461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 14, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 46, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 46, Amended 0, Repealed 0.

Date Adopted: September 25, 2006.

Jay J. Manning
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 and equipment verification requirements (Part III), primary response contractor standards (Part IV) and recordkeeping 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. (1) This chapter applies to owners and operators of onshore and offshore facil-

ities and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to Washington nonprofit corporations, their enrolled members, and agents that submit plans on behalf of onshore and offshore facilities and covered vessels.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

NEW SECTION

WAC 173-182-020 Authority. RCW 88.46.060, 88.46.070, 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.270, 90.56.280, 90.56.310, 90.56.320, 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 onshore and offshore facilities and covered vessels.

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 primary response contractor intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in 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) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(9) "Director" means the director of the state of Washington department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(12) "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.

(13) "Ecology" means the state of Washington department of ecology.

(14) "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 covered vessel, in a single transaction.

(15) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(16) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(17) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(18) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(19) "Interim storage" 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.

(20) "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.

(21) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(22) "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.

(23) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(24) "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).

(25) "*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.

(26) "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.

(27) "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.

(28) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(29) "Onshore facility" means any facility, as defined in subsection (14) 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.

(30) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(31) "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.

(32) "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.

(33) "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.

(34) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(35) "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (14) of this section.

(36) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(37) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills 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.

(38) "Planning standards" means goals and criteria 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.

(39) "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.

(40) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(41) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(42) "Resident" means the spill response resources are staged at a location within the described planning area.

(43) "Responsible party" means a person liable under RCW 90.56.370.

(44) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(45) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(46) "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.

(47) "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.

(48) "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.

(49) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(50) "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.

(51) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(52) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(53) "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.

(54) "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.

(55) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

PART II: COVERED 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 of the tank vessel; or

(b) The owner or operator of the facilities at which the tank 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 tank vessel 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 covered vessels other than tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the covered vessel; or

(b) The agent for the covered 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 covered vessel owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the covered vessel company.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator of the facility; or

(b) A PRC contractually obligated to provide containment and cleanup services to the facility.

(4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, pro-

vided that the plan contents meet the requirements in this chapter for each covered 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 two 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 once 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 permanent loss of initial response personnel listed in command and general staff ICS positions provided in the plan or changes in normal operating procedures. A facsimile or electronic mail will be considered sufficient 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) Approval from ecology must be received 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) State and federal on-scene coordinators have directed such actions.

NEW SECTION

WAC 173-182-150 Post-spill review and documentation procedures. 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: Unified command has been established during a spill; and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

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 a safe and immediate response to spills in Washington;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill, and to the training of personnel to implement the plan; and

(d) 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 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) For vessel umbrella plans, a worst case volume for each port of operation may be submitted to ecology for consideration, if the operations of enrolled vessels differ by port.

(iii) For multiple facilities using a single umbrella plan, separate worst case spill volumes are required for each facility.

(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 chapter.

(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 or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan 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, moor-

ing 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 plan 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 (group);

(g) Oil volume capacity by group;

(h) Description of the operations covered by the plan.

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 a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations 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 covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall 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, provided that vessel umbrella plan holders shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

Umbrella vessel plans shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(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 and responsible parties 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, and estimate the quantity and nature of the spill. An updated report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly.

NEW SECTION

WAC 173-182-260 Notification and call-out procedures. (1) Each plan shall include procedures which will be taken to immediately notify appropriate parties that a spill has occurred. The plan shall identify the central reporting office or individuals responsible for implementing the notification process.

(2) 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, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(3) The procedure shall establish a clear order of priority for immediate notification.

(4) In addition, facility plans 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 and PRCs are required to maintain response equipment in a state of constant readiness, and in accordance with manufacturer specifications.

(2) Plan holders and PRCs that own equipment shall develop schedules, methods, and procedures for equipment maintenance. Maintenance records shall be kept for at least five years and made available if requested by ecology.

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. 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 section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, 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 agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.

(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) A detailed description of 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 as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. 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) Covered 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 estimated 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) Covered vessel umbrella plans must describe 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 these regulations. 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. The responsible party must address the entire volume of an actual spill regardless of the planning standards.

(2) The planning standards described in this chapter 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 plan to obtain nondedicated work boats and operators that will be available to deploy GRPs, enhance skimming, to provide platforms as vessel of opportunity skimming systems, logistical support or other uses during a spill. At a minimum, the plan shall describe a plan that will support the worst case spill response with work boats and operators that could have arrived on scene beginning at forty-eight hours.

NEW SECTION

WAC 173-182-320 Planning standards for aerial surveillance. Each plan shall provide for aerial oil tracking resources capable of being on-scene within six hours of spill awareness. At a minimum, these resources must be capable of supporting oil spill removal operations for three, ten-hour operational periods during the initial seventy-two hours of the discharge.

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 NWACP, 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 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 each and 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 shoreside interim storage locations. For marine waters, 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. For freshwater environments, shoreside storage can be identified to meet sixty-five percent of the 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 and PRCs that own equipment shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. To avoid duplication, plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by the department. Ecology will use the criteria in ASTM International F 1780-97 (Reapproved 2002).

Determination of efficiency of recovery systems in varied operating environments and product types:

(1) 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.

(2) 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, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations. This may require longer mobilization time than those found in this chapter.

NEW SECTION

WAC 173-182-348 Determining effective daily recovery capacity. (1) Plan holders and PRCs that own recovery equipment shall request an EDRC using the following procedures and the criteria in Title 33 CFR 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices."

(2) When calculating the EDRC, the formula R = T x 24 hours x 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 x 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.

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) For purposes of determining plan adequacy, 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, the mobilization planning factor to be used by the plan holder, PRC and ecology is thirty minutes. For all other dedicated response equipment the mobilization plan-

ning factor is one hour. Nondedicated resources shall have a mobilization planning factor 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 alternative 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 sites for covered vessels at locations where transfers occur, and for facilities with a vessel terminal.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage
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 20,000 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	Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived	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	More boom as necessary for containment, recovery or protection	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 General planning standards for covered vessel transit locations for all of Puget Sound.

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 12,500 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 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 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	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 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, surface waters of the state with the potential to be impacted by a spill from the pipeline.

(a) To determine the two-hour booming requirements, select the widest river within the WRIA.

(b) Determine the average river speed at this location.

(i) For rivers with a current of two knots boom in the amount of three times the widest point in the river that the pipeline could affect.

(ii) For rivers with a current of three knots the requirement would be for five times the widest point in the river that the pipeline could affect.

(iii) For rivers with a current of five knots the requirement would be for seven times the widest point in the river 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 spill response and should be staged in various locations along the pipeline.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
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 12,500 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	More boom as necessary for containment, recovery or protection	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	More boom as necessary for containment, recovery or protection	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 San Juan County planning standard. Those covered 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.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
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 length of 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 12,500 barrels within 24-hour period could have arrived	1 times the EDRC

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
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 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 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	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 Padilla Bay planning standard. Those covered 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 Kelly's 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.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
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 length of 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 12,500 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 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 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	More boom necessary for containment, recovery or protection	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 Commencement Bay—Quartermaster Harbor planning standard. Those covered 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.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
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 length of 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 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
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	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	More boom as necessary for containment, recovery or protection	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 Nisqually planning standard. Those covered 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.

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 of boom, or 4 times the length of 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 12,500 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 20,000 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

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
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	More boom as necessary for containment, recovery or protection	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 Dungeness planning standard. Those covered 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.

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 of boom, or 4 times the length of 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 12,500 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 20,000 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
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	More boom as necessary for containment, recovery or protection	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 Neah Bay staging area. Those covered 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		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
3	Additional 2,000 feet or 4 times the length of 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 12,500 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 20,000 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 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	More boom as necessary for containment, recovery or protection	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 Copalis, Flattery Rocks and Quillayute Needles planning standard. Those covered vessel and facility plan holders that transit or operate within the jurisdictional waters of Washington state east of the Three Nautical Mile Line and north of latitude 47°06'00"N, and south of latitude 48°09'00"N (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.

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 length of 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 12,500 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 20,000 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

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
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	More boom as necessary for containment, recovery or protection	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 Grays Harbor planning standard. Those covered vessel and facility plan holders that transit or operate within Washington waters in 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.

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 of boom or 4 times the length of 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 2,000 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 12,500 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
12	Additional 20,000 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 20,000 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	More boom as necessary for containment, recovery or protection	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 Willapa planning standard. Those covered vessel and facility plan holders that transit or operate within Washington waters in 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.

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		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
3	Additional 2,000 feet of boom, or 4 times the length of 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 12,500 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 20,000 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 20,000 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	More boom as necessary for containment, recovery or protection	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 173-182-415 Cathlamet staging area. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 36 and statute mile 42 must meet the following standards. The resources to meet the two and three 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 of boom, or 4 times the length of 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 20,000 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

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
24	Additional 20,000 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	More boom as necessary for containment, recovery or protection	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 Vancouver planning standard. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 99 and statute mile 107 must meet the following standards.

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 of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
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 20,000 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 20,000 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	More boom as necessary for containment, recovery or protection	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 Tri-cities planning standard. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 316 and statute mile 322 must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
3	Additional 2,000 feet of boom, or 4 times the length of 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 20,000 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 20,000 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	More boom as necessary for containment, recovery or protection	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 covered 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 a description of 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;

(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) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect.

(4) Each plan shall identify potential initial command post locations.

NEW SECTION

WAC 173-182-520 Planning standards for shoreline cleanup. Each plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations. This standard will be evaluated using the criteria found in 33 CFR Part 155 Appendix B and 33 CFR 154 Appendix C.

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 ground water spills.

(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.

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 or letters of intent or agreement shall be counted when calculating the planning standards. In the case of nondedicated storage devices, these will be derated by fifty percent of maximum storage volume (counted at a one to two ratio) and acquisition of these resources will be tested in unannounced drills.

(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 Response list, the federal Oil Spill Removal Organization guidelines, the *Field Operations Guide* 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 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 and shall be subject to 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 provides an equivalent or higher level of 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. Such notice will include specific reference to the regulatory standard in question.

(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 AND EQUIPMENT VERIFICATION PROGRAM

NEW SECTION

WAC 173-182-700 Drill participation, scheduling and evaluation. (1) Plan holders and PRCs shall participate in a drill and equipment verification 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 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 evaluation within thirty days of receipt of the report.

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 each type of equipment to 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 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 at least 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.

(d) Plan holders may request credit for the prebooming of an oil transfer.

(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 scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unan-

nounced drill program to survey, assess, verify, inspect or deploy response equipment 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 notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately 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. Transportation both for execution of the discharge and support functions.

(12) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(14) Procurement: Demonstrate the ability to establish an effective procurement system.

(15) 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 have up to ninety days to submit a lessons learned summary supporting 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 tabletop 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 plans and 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) Equipment and personnel readiness will be verified once the application is approved. Ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of each type of equipment listed in the application. These 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 verification 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.

(3) Ecology will immediately notify plan holders of changes in the approval status of PRCs.

PART V: RECORDKEEPING AND COMPLIANCE INFORMATION

NEW SECTION

WAC 173-182-900 Recordkeeping. Ecology may verify compliance with this chapter by examining training and equipment maintenance records, drill records, accuracy of call-out and notification lists, spill management team lists, ICS forms, waste disposal records, post-spill reviews and records on lessons learned.

NEW SECTION

WAC 173-182-910 Noncompliance. (1) If an owner or operator of a covered vessel, onshore or offshore facility, a person or 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 the plan; or

(c) Revoke the approval status.

(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, contin-

gency plan, except that a covered 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 an onshore or offshore facility may not operate without an approved, or conditionally approved, plan nor transfer cargo or passengers to or from a covered 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. In the case of a continuing violation, each day's continuance shall be considered a separate violation.

(4) Any person found guilty of willfully violating any of the provisions of this section, 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 06-20-036
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed September 25, 2006, 1:25 p.m., effective October 26, 2006]

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

Purpose: A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. WAC 458-61A-211 explains that the exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. The rule explains when a mere change in form or identity where no change in beneficial ownership occurs and provides examples.

The department amended this rule to make an edit change in the example provided in subsection (4)(b) so that the entity names used in the example read correctly throughout.

Citation of Existing Rules Affected by this Order: WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships.

Statutory Authority for Adoption: RCW 82.32.300, 82.04.150, and 82.01.060(2).

Adopted under notice filed as WSR 06-15-020 on July 7, 2006.

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

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

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

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

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

Date Adopted: September 25, 2006.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships. (1) **Introduction.** A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. If the transfer of real property results in the grantor(s) having a different proportional interest in the property after the transfer, real estate excise tax applies.

(2) **Qualified transactions.** A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

(a) The transfer by an individual or tenants in common of an interest in real property to a corporation, partnership, or other entity if the entity receiving the ownership interest receives it in the same pro rata shares as the individual or tenants in common held prior to the transfer. (See also WAC 458-61A-212, Transfers where gain is not recognized under the Internal Revenue Code.)

(b) The transfer by a corporation, partnership, or other entity of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned the corporation, partnership, or other entity. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to real estate excise tax.

(c) The transfer by an entity of its interest in real property to its wholly owned subsidiary, the transfer of real property from a wholly owned subsidiary to its parent, or the transfer of real property from one wholly owned subsidiary to another.

(d) The transfer by a corporation, partnership or other entity of its interest in real property to another corporation, partnership, or other entity if the grantee owner(s) receives it

in the same pro rata shares as the grantor owner(s) held prior to the transfer.

(e) Corporate mergers and consolidations that are accomplished by transfers of stock or membership, and mergers between corporations and limited partnerships as provided in chapters 25.10 and 24.03 RCW.

(f) A transfer of real property to a newly formed, beneficiary corporation from an incorporator to the newly formed corporation, provided:

(i) The proper real estate excise tax was paid on the original transfer to the incorporator; and

(ii) It was documented on or before the original transfer that the incorporator received title to the property on behalf of that corporation during its formation process.

This tax exemption does not apply to a transaction in which a property owner acquires title in his or her own name and later transfers title to the corporation upon its formation.

(g) A transfer into any revocable trust.

(h) A conveyance from a trustee of a revocable trust to the original grantor or to a beneficiary if no valuable consideration passes, or if the transaction is otherwise exempt under this chapter (for example, a gift or inheritance). A sale of real property by the trustee to a third party, or to a beneficiary for valuable consideration, is subject to the real estate excise tax.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Andy owns a 100% interest in real property. He transfers his property to his solely owned corporation. The transfer is exempt from real estate excise tax because there has been no change in the beneficial ownership interest in the property.

(b) Elizabeth owns a 100% interest in real property, and is the sole owner of Zippy Corporation. She transfers her property to Zippy. The corporation pays $5,000 to Elizabeth and agrees to make payments on the underlying debt on the property. Despite the fact that there was consideration involved in the transfer, it is still exempt from tax because there was no change in beneficial ownership.

(c) Jim, Kathie, and Tim own real property as joint tenants. They transfer their property to their LLC in the same pro rata ownership. The transfer is exempt from real estate excise tax because there has been no change in beneficial ownership.

(d) Pat, Liz, and Erin own Stage Corporation. They also own Song & Dance Partnership, in the same pro rata ownership percentages as their interests in the corporation. Stage Corporation transfers real property to Song & Dance Partnership. The transfer is exempt from real estate excise tax, because there has been no change in beneficial interest.

(e) Morgan owns real property. Brea owns Sparkle Corporation. Morgan transfers real property to Sparkle in exchange for an interest in the corporation. The transfer is subject to real estate excise tax because there has been a change in the beneficial interest in the real property. The tax applies to the extent that the transfer of real property results in the grantor having a different proportional interest in the property after it is transferred. (Note, however, that Morgan and Brea may be able to structure their transaction in a manner that would qualify for exemption under WAC 458-61A-212.)

(f) Dan owns property as sole owner. Jill owns property as sole owner. Dan and Jill each transfer their property to Rhyming LLC, which they form together. The transfers are taxable because there has been a change in the beneficial ownership interest in the real property. To the extent that the transfer of real property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Dan and Jill may qualify for an exemption under WAC 458-61A-212.)

(g) Fred and Steve are equal partners in Jazzy Partnership. They decide to transfer real property from the partnership to themselves as individuals. Based on its true and fair value, the partnership transfers 60% of the real property to Fred and 40% to Steve. This distribution is not in proportion to their ownership interest in Jazzy Partnership, and the transfer is not exempt because there has been a change in the beneficial ownership interest. To the extent that the transfer of property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Fred and Steve may qualify for an exemption under WAC 458-61A-212.)

(4) **Disparate treatment of ownership interests.**

(a) Where the ownership of real property is different for financial accounting purposes than for federal tax purposes, the beneficial ownership interest in the real property is deemed the entity which is the owner for financial accounting purposes. Any transfer from the entity that is the owner for federal tax purposes to the owner for financial accounting purposes, or vice versa, is subject to the real estate excise tax.

(b) For example, Giant Company wants to expand its business. It identifies some real property, but is unable to finance the purchase through a normal loan. It contracts with Mega Loans Inc. to enter into a "synthetic lease" for the purchase of the real property. Under the terms of the synthetic lease, Mega Loans will take title to the real property, and Giant Company will lease it from Mega Loans. Real estate excise tax is paid on the purchase of the real property by Mega Loans. The terms of the lease also provide that ((~~Mega Loans~~)) Giant Company will be the owner for federal tax purposes and ((~~Giant Company~~)) Mega Loans will be the owner for financial accounting purposes. Per the lease agreement, after a specified time Mega Loans will transfer title to the real property to Giant Company. The transfer of title from Mega Loans to Giant Company is subject to real estate excise tax.

(5) **Family corporations, partnerships, or other entities.** This exemption applies to transfers to an entity that is wholly owned by the transferor and/or the transferor's spouse or children, regardless of whether the transfer results in a change in the beneficial ownership interest. However, real estate excise taxes will become due and payable on the original transfer as otherwise provided by law if:

(a) The partnership or corporation thereafter voluntarily transfers the property; or

(b) The transferor, spouse or children voluntarily transfer stock in the corporation, or interest in the partnership capital to other than:

(i) The transferor and/or the transferor's spouse or children;

(ii) A trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of transfer to the trust; or

(iii) A corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer is not paid within sixty days of becoming due.

For example, parents own real property as individuals. They create an LLC that is owned by themselves and their three children. The parents transfer the real property to the LLC. Despite the fact that there was a change in beneficial ownership interest, it is still exempt from tax, because the LLC is owned by the grantor and/or the grantor's spouse or children.

(6) **Transfers when there is not a change in identity or form of ownership of an entity.** This exemption applies to transfers of real property when the grantor and grantee are the same.

For example, John and Megan own real property as tenants in common. They decide that they prefer to hold the property as joint tenants with rights of survivorship. John and Megan, as tenants in common, convey the property to John and Megan as joint tenants with rights of survivorship. The transfer is exempt from real estate excise tax.

WSR 06-20-038
PERMANENT RULES
SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed September 25, 2006, 2:09 p.m., effective October 26, 2006]

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

Purpose: Revision of SCAPCA Regulation I, Article X, Sections 10.06 and 10.07 to allow for full cost recovery of SCAPCA's Air Operating Permit (AOP) program as well as recover the past Air Operating Permit program deficit accrued over the past ten years.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Article X, Sections 10.06 - Registration and Operating Permit Fees For Air Contaminant Sources and SCAPCA Regulation I, Article X, Section 10.07 - Application and Permit Fees for Notice of Construction and Application for Approval and for Notice of Intent to Install and Operate a Temporary Stationary Source.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Adopted under notice filed as WSR 06-16-058 on July 28, 2006.

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

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

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

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

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

Date Adopted: September 7, 2006.

April Westby
Environmental Engineer

AMENDATORY SECTION

REGULATION I, ARTICLE X, SECTIONS 10.06 & 10.07

ARTICLE X

SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES

A. Each source required by Article IV, Section 4.01 to be registered, each air operating permit source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction and Application for Approval is subject to an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner or operator shall pay the fee, pursuant to the requirements in Section 10.02. Fees received pursuant to the registration program or the operating permit program shall not exceed the actual costs of program administration.

B. The annual fee for each source shall be determined as follows:

1. For sources that are not subject to Section 10.06.B.3, 4, or 5. of this Regulation and which emit less than 5 tons per year of criteria and toxic air pollutants:

a. a flat fee of $160; and

b. a $30 fee for each stack and other emission point, not to exceed $600; and

c. an emission fee of $20 per ton of each criteria and toxic air pollutant; and

d. an additional fee of $150 for each source which operated at least one incinerator or burn out oven during the registration period; and

e. an additional fee of $100 if the source is required by the Authority to submit an annual emissions inventory to the Washington Emission Data System (WEDS).

2. For sources that are not subject to Section 10.06.B.3, 4, or 5. of this Regulation and which emit 5 tons or more per year of criteria and toxic air pollutants, but less than 100 tons per year of any one criteria pollutant:

a. a flat fee of $215; and

b. a $30 fee for each stack and other emission point, not to exceed $600; and

c. an emission fee of $20 per ton of each criteria and toxic air pollutant; and

d. an additional fee of $150 for each source which operated at least one incinerator or burn out oven during the registration period; and

e. an additional fee of $100 if the source is required by the Authority to submit an annual emissions inventory to the Washington Emission Data System (WEDS).

3. For facilities, where the dispensing of gasoline is the only registered emission point, and which are not subject to Section 10.06.B.4 of this Regulation, a flat fee of $165.

((~~3~~))4. For ((~~air operating permit sources, a share of the assessment by Ecology, pursuant to RCW 70.94.162(3), determined according to Section 10.06.D of this Regulation, plus:~~)) sources that are subject to the air operating permit (AOP) program during any portion of the calendar year:

a. ((~~an~~)) Annual base fee of $3,000; ((~~and~~))

b. ((~~an~~)) Emission fee of $31.11 per ton of actual emissions from the previous calendar year;

c. SCAPCA time fee, as determined by the following formula:

$$TF_I = \frac{(H_I + H_G) \times RPC}{H_T}$$

Where,

TF_I is the SCAPCA time fee for AOP source, I;

H_I is the total SCAPCA staff hours spent on AOP source, I;

H_G is the total general hours SCAPCA staff spent on the AOP program divided by the total number of sources subject to the AOP program during any portion of the calendar year;

RPC is the remaining SCAPCA AOP program cost, calculated by subtracting the sum of the Section 10.06.B.4.a and b. fees from the total SCAPCA AOP program costs; and

H_T is the total number of hours SCAPCA staff spent on the AOP program, including total time spent on the AOP sources and general hours spent on the AOP program.

Note: H_I, H_G, H_T, and RPC are for the most recent SCAPCA fiscal year.

Note: H_I, H_G, and H_T are obtained from SCAPCA time accounting records.

d. Program deficit recovery fee, as determined by the following formula:

$$PDRF_I \text{ } {}_{y=2006 \Rightarrow 2015} = \frac{\text{Remaining Program Deficit}_y}{(2016 - y)} \times \frac{E_{I\,(y-1)}}{E_{T(y-1)}}$$

Where,

$PDRF_I$ is the program deficit recovery fee assessed during year "y" (from 2006-2015) to each AOP source, I, that operated during any portion of the calendar year "y";

Remaining Program Deficit_y is the total cumulative funding deficit for SCAPCA's AOP program at the end of year "y";

"y" is the year, beginning in year 2006 and ending in year 2015;

E_I is the total (in tons) of actual emissions from AOP source, I, during the calendar year prior to year "y" (y-1); and

E_T is the sum (in tons) of the actual emissions from all AOP sources during the calendar year prior to year "y" (y-1).

Note: The program deficit recovery fee will expire in 2016 when the AOP program deficit will be zero.

e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I x A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.B.4.a., b., c., and d. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3;, and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.B.4.a., b., c., and d. of this Regulation.

((~~4~~))5. For affected units under Section 404 of the Federal Clean Air Act (42 USC 7401 et seq):

a. A fee of $50 per hour of time expended in carrying out the fee eligible activities specified in RCW 70.94.; and

b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I x A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.B.5.a. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3); and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.B.5.a. of this Regulation.

((~~b. a share of the assessment by Ecology, pursuant to RCW 70.94.162(3), determined pursuant to Section 10.06.D of this Regulation.~~

~~5. For facilities, where the dispensing of gasoline is the only registered emission point, and which are not subject to Section 10.06.B.3 of this Regulation, a flat fee of $165.~~

~~C. The Board shall annually review the fee schedule for air operating permit sources and projected costs to implement the requirements of RCW 70.94.161 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to recover program costs. Such review shall include opportunity for public review and comment on the projected costs and any changes to the operating permit fee schedule. Accordingly, the Authority shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.~~

~~D. Individual shares of the assessment pursuant to RCW 70.94.162(3) shall be determined by the following formula:~~

$$I = \frac{F_I x A_E}{F_T}$$

~~Where,~~

~~I is the individual share of the assessment, and~~

~~F_I is the individual fee assessed pursuant to Section 10.06.B.3, or 4. of this Regulation, and~~

~~A_E is the total assessment pursuant to RCW 70.94.162(3), and~~

~~F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.B.3, or 4. of this Regulation.~~))

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL AND FOR NOTICE OF INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE

The fees contained in Section 10.07 do not apply to air operating permit sources.

A. Filing Fee - For each project required by Article V to file a Notice of Construction and Application for Approval (NOC) or a Notice of Intent to Install and Operate a Temporary Stationary Source, the applicant shall pay a filing fee of $150 at the time of filing the application.

B. Project Review Fee - IN ADDITION to the filing fee provided in Section 10.07.A, the applicant shall pay a fee, according to the following:

1. Equipment fee - Sources for which an application is made for one or more emission points under one Notice of Construction or Notice of Intent to Install and Operate a Temporary Stationary Source application, as allowed in Section 5.02.G, the equipment fee, for each emissions unit and/or air pollution control system being installed or modified, shall be as follows:

a. Fuel Burning Equipment With or Without Air Pollution Control Equipment:

Design Input Size (MMBtu/hr)			Fee
.4	<	5	$200
5	<	10	$250
10	<	20	$300
20	<	50	$350
50	<	100	$400
100	<	250	$500
250	<	500	$650
500	<	UP	$850

b. Refuse Burning Equipment Including Air Pollution Control Equipment:

Capacity (ton/day)			Fee
0	<	12	$1,000
12	<	250	$1,500
250	<	UP	$2,500

c. Process Equipment and/or Air Pollution Control Equipment or Uncontrolled Process Equipment:

Actual ft^3/min			Fee
0	<	5,000	$150
5,000	<	20,000	$250
20,000	<	50,000	$350
50,000	<	100,000	$450
100,000	<	250,000	$550
250,000	<	500,000	$650
500,000	<	UP	$800

d. Gasoline dispensing facilities:

Equipment Being Installed	Fee
Annual facility gasoline throughput of less than 1.5 million gallons	$150
Annual facility gasoline throughput of 1.5 million gallons or greater	$250

e. For sources not included in the above categories, an hourly fee of $50.00 per hour of time expended in project review.

2. Significant emissions review fee - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. above, for any new or modified source of air pollution to be constructed and anticipated to produce significant emissions, as defined in Article I, Section 1.04. of this Regulation, a significant emissions review fee of $250.

3. Toxic air pollutant review fee - In addition, except for projects subject to an equipment fee, pursuant to Section 10.7.B.1.e. above, for any new or modified source of air pollution which requires review pursuant to Chapter 173-460 WAC, a toxic air pollutant review fee. For sources with one or more emission points under one Notice of Construction application, as allowed in Section 5.02.G, a separate toxic air pollutant review fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units. The toxic air pollutant review fee shall be as follows:

a. For a new or modified source using WAC 173-460-080 (2)(e), Small Quantity Emission Rates, to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070 & WAC 173-460, an additional charge of $100;

b. For a new or modified source using dispersion screening models (e.g., EPA SCREEN or TSCREEN) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, an additional charge of $150;

c. For a new or modified source using more refined dispersion models (e.g., EPA ISC3) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, an additional charge of $400; or

d. For a new or modified source using a second tier analysis under WAC 173-460-090 or a risk management decision under WAC 173-460-100 to demonstrate that ambient impacts are sufficiently low to protect human health and

safety, as required WAC 173-460-070, an additional charge of $1000.

4. NSPS Review Fee - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. above, for any new or modified source of air pollution, subject to a standard under WAC 173-400-115 (NSPS), an additional charge as follows:

a. If subject to 40 CFR Part 60, Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, with only natural gas as a fuel, an additional charge of $50;

b. If subject to 40 CFR Part 60, Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, using fuels other than solely natural gas, an additional charge of $100;

c. If subject to 40 CFR Part 60, Subpart I, Standards of Performance for Hot Mix Asphalt Facilities, an additional charge of $100;

d. If a volatile organic liquid storage tank subject to 40 CFR § 60.110b (b) or (c), no additional charge;

e. If subject to 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, no additional charge; and

f. If subject to a subpart of 40 CFR Part 60, other than those covered in a. through d. above, an additional charge of $250.

5. NESHAP Review Fee - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. above, for any new or modified source of air pollution, subject to a standard under WAC 173-400-075 (NESHAP), an additional charge as follows:

a. If subject to 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, and/or WAC 173-400-075(6), Emission Standards for Perchloroethylene Dry Cleaners, no additional charge;

b. If subject to 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, an additional charge of $100;

c. If subject to 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning, an additional charge of $150; and

d. If subject to a subpart of 40 CFR Part 63, other than those covered in a through c. above, an additional charge of $250.

6. Integrated Review Fee - In addition, for integrated review of a Notice of Construction and Application for Approval, as allowed under Section 5.02.J of this Regulation, an additional charge of $250.

C. Change in Condition Fee - Sources for which application is made for a change in conditions pursuant to Section 5.10.C of this Regulation, the fee shall be one half the current fee for a Notice of Construction and Application for Approval or a Notice of Intent to Install and Operate a Temporary Stationary Source for that type of source, including the filing fee, according to Section 10.07.A, and the applicable fees, according to Section 10.07.B, or $350, whichever is less.

D. Compliance Investigation Fee - Where a compliance investigation is conducted pursuant to Section 5.12 of this Regulation, the compliance investigation fee shall be $300 per emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

E. SEPA Review Fee - Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an Addendum to, or adoption of, an existing environmental document pursuant to the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required, in association with a Notice of Construction and Application for Approval or a Notice of Intent to Establish a Temporary Stationary Source, the applicant shall pay a SEPA or EIS review fee of $50 per hour or $125, whichever is greater. The applicant shall pay a partial SEPA review fee of $125, at the time of submittal of the EIS or SEPA. The Authority will bill the owner, operator, or applicant for the remainder of the SEPA or EIS review fee after a threshold determination has been made and/or a preliminary determination of the Notice of Construction has been issued.

F. Complex Project Review Fee -

1. The Control Officer may notify the applicant in writing that, due to the complexity of the application, the permit processing fees will be based on the actual hours spent by the Authority staff in evaluating and verifying the proposed project's compliance with applicable federal, state, and local rules and regulations. The complexity fee applies to Notice of Construction and Application for Approval orders and Notice of Intent to Establish a Temporary Stationary Source permissions to operate.

2. The complexity fee assessed shall be $50 per hour and shall not exceed the actual cost of processing and reviewing the proposed project. This complexity fee may include, but is not limited to, costs associated with planning meetings and/or design evaluations, that are related to the proposed project, prior to actual submission of a complete application.

3. The complexity of a permit shall be determined by dividing the usual fee in Section 10.07.B.1.a - d. by $50 per hour. If this number is less than the actual hours spent in review, the Authority may elect to assess a Complex Project Review Fee instead of assessing the fee according to the schedule in Section 10.07.B.1.a. - d. The actual review time shall not include the time associated with review of an environmental checklist or environmental impact statement. These fees are assessed separately under Section 10.07.E.

4. The applicant may avoid being subject to a Complex Project Review Fee by providing additional information with the application that reduces the cost to the Authority in reviewing the application to a level consistent with the fee schedule in Section 10.07.B.1a - d.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 06-20-040

PERMANENT RULES

GAMBLING COMMISSION

[Order 602—Filed September 26, 2006, 2:01 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. The new chapter incorporates rules regarding charitable and nonprofit organizations offering raffles.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-13-077 on June 20, 2006, with a published date of July 5, 2006.

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

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

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

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

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

Date Adopted: September 25, 2006.

Susan Arland

Rules Coordinator

Chapter 230-11 WAC

RAFFLES

CONDUCTING A RAFFLE

NEW SECTION

WAC 230-11-001 "Licensees," "licensee," "organizations," and "organization" defined. (1) In this chapter, "licensee" and "licensees" means those charitable or nonprofit organizations which we require to be licensed to conduct raffles.

(2) "Organization" and "organizations" means all bona fide charitable or nonprofit organizations conducting unlicensed raffles authorized by chapter 9.46 RCW, including those authorized by RCW 9.46.0315 and 9.46.0321.

NEW SECTION

WAC 230-11-005 Display the raffle license. Licensees conducting a raffle must prominently display the raffle license or a copy of the license at the site and time of the drawing.

NEW SECTION

WAC 230-11-006 Requiring raffle ticket purchase for membership prohibited. Organizations must not require a person to buy a raffle ticket or pay to participate in any gambling activities in order to become a member of the organization.

NEW SECTION

WAC 230-11-010 Number tickets consecutively. All raffle tickets must:

(1) Be consecutively numbered; or

(2) Be printed with letters or symbols which do not repeat within the population of all tickets sold for a particular raffle.

NEW SECTION

WAC 230-11-012 Licensees may conduct a joint raffle. Raffle licensees may jointly conduct a raffle if:

(1) Licensees maintain in writing the method by which the income, expenditures for prizes, and all other expenses, received and expended in connection with the raffle will be divided among them; and

(2) One licensee sets up a separate bank account into which all of the proceeds from the raffle are deposited and from which all of the expenses in connection with the raffle, including but not limited to, all payments for prizes, are made; and

(3) Participating licensees keep records which clearly disclose the amount of money received or each licensee expends in connection with the raffle and the purpose(s) for which the money was spent; and

(4) Licensees count all gross receipts that each participating licensee received toward their gross receipts limit.

SELLING TICKETS

NEW SECTION

WAC 230-11-014 Maximum raffle ticket price. Raffle tickets must not be sold for more than twenty-five dollars each.

NEW SECTION

WAC 230-11-015 Provide rules to participants. At the time of purchase, organizations must inform all participants by either printing on the participant's portion of the ticket or otherwise providing to each participant, in writing, the following:

(1) All rules by which prizes may be won in the raffle; and

(2) The cost of each ticket; and

(3) All prizes available, whether cash or merchandise; and

(4) Date, time, and location of drawing; and

(5) Whether a participant is required to be present at the raffle drawing in order to be eligible to win a prize; and

(6) Name of the organization conducting the raffle.

NEW SECTION

WAC 230-11-020 Record information on ticket stub. If an organization sells raffle tickets to the general public or conducts raffles that do not require the winner to be present at the drawing, the organization must include a stub or other detachable section bearing a number, letter, or symbol matching the number, letter, or symbol on the ticket or object representing the player's ticket. The organization's portion must include the participant's name, complete address, telephone number, and other information necessary to notify the winner.

NEW SECTION

WAC 230-11-025 Bundling and selling tickets at a discount. (1) Licensees may put tickets together in a bundle and sell them at a discount if they:

(a) Create the discount plan before selling any raffle tickets; and

(b) Do not change the discount plan during the raffle; and

(c) Make single nondiscounted tickets available to all participants; and

(d) Use only one discount plan for each raffle; and

(2) Booklets of bundled discounted tickets must contain the number of tickets named in the discount plan; and

(3) Licensees must not remove tickets from a booklet to sell them individually; and

(4) Each booklet of bundled tickets must have the following information printed on the cover:

(a) A description of the discount plan; and

(b) The number of tickets in the booklet; and

(c) The total cost of the booklet; and

(d) A consecutive number; and

(5) Licensees must establish controls and accounting procedures necessary to determine gross gambling receipts from ticket sales.

NEW SECTION

WAC 230-11-030 Restrictions on ticket sales. (1) Only members of the organization or volunteers under the supervision of a member may sell tickets; and

(2) Organizations must sell tickets for a particular raffle for the same price unless offering an authorized discount plan; and

(3) Organizations must not:

(a) Sell raffle tickets via the internet; or

(b) Require anyone to purchase more than one raffle ticket; or

(c) Give away raffle tickets; or

(d) Give an opportunity to participate in a raffle drawing to a person who has not purchased a ticket.

NEW SECTION

WAC 230-11-035 Incentives for selling tickets. (1) Organizations must not pay members or volunteers for selling tickets or managing or operating a raffle, unless the person is a full-time or part-time employee of the organization with duties other than selling tickets or managing or operating raffles.

(2) Licensees may provide members or volunteers with noncash incentives for selling tickets if the licensee:

(a) Bases the incentives on the number of tickets sold; and

(b) Gives incentives that do not exceed five percent of the gross gambling receipts of the raffle; and

(c) Maintains a record of the name, address, and telephone number of all persons receiving incentives.

DRAWING TICKETS

NEW SECTION

WAC 230-11-040 Place ticket stubs in receptacle for drawing. Each person who sells a raffle ticket must give the organization all ticket stubs or other detachable sections of all tickets sold. The organization must place each stub or other detachable section of each ticket sold into a receptacle from which the organization will draw the winning tickets unless they use one of the authorized alternative drawing formats.

NEW SECTION

WAC 230-11-045 Draw winning tickets randomly. A "drawing" means a random selection process for determining winners in a raffle. To be random, each ticket in the drawing must have an equal and fair chance of being drawn as a winner. Organizations must design the ticket drawing receptacle so that each ticket has an equal opportunity to be drawn.

NEW SECTION

WAC 230-11-050 Using alternative drawing formats. Licensees may use alternative drawing formats that randomly determine winners if licensees:

(1) Fully disclose to each player the random selection process used in the alternative drawing format before selling tickets; and

(2) Maintain a copy of the disclosure with the permanent raffle records; and

(3) Use controls and accounting procedures that:

(a) Provide the ability to audit gross gambling receipts from ticket sales; and

(b) Have sufficient controls to prevent manipulation of the random selection process; and

(c) Document the random selection process.

NEW SECTION

WAC 230-11-055 Authorized alternative drawing formats. Licensees may use the following types of alternative drawing formats or similar random selection processes:

Mock races.

(1) The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered mock animal(s), ball(s), or other similar object(s) that can use natural elements to move the objects (water, gravity, wind) in a race. All objects must be identical in weight, size, and shape, to have an equal opportunity to win. The licensee

must release all objects simultaneously at a start line. The first numbered object to cross the finish line wins.

Poker runs.

(2) The licensee sells participants consecutively numbered tickets or poker tally sheets to participants. Participants travel a predetermined course with predetermined drawing stations (typically five drawing stations). At each drawing station, participants draw one playing card for each ticket purchased. Station attendants must verify the card drawn and record the card value on the poker ticket tally sheet. After all participants have completed the course, the participant with the best recorded poker hand wins.

Ball drops.

(3) The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered ball. All balls must be equal in size, weight, and shape, to have an equal opportunity to win. The licensee suspends all purchased numbered balls in the air and simultaneously releases them over a target zone. The ball, closest or first, to hit the predetermined target wins.

Animal plops.

(4) The licensee sells participants consecutively numbered tickets that identify a specific corresponding square on a numbered grid. The licensee releases the animal into the grid area until the animal has completed its plop. The numbered square containing the plop wins.

Multiple stage drawings.

(5) The licensee sells participants consecutively numbered tickets. The licensee uses multiple drawing phases to eliminate participants until the licensee declares the remaining ticket holder(s) the winner(s). The licensee may use second element of chance plans as long as the plans meet the criteria set out in WAC 230-11-060.

Bucket raffles.

(6) The licensee sells participants consecutively numbered tickets. Participants place their tickets into any number of separate buckets or other receptacles for separate prizes. We consider the multiple drawings one single raffle. If licensees use different tickets for each receptacle, we consider each drawing an individual raffle.

Calendar raffles.

(7) The licensee sells participants consecutively numbered calendars with removable stubs. The licensee places all sold calendar stubs into the drawing receptacle. On predetermined dates identified on the calendar, the licensee conducts drawings. The licensee places all winning stubs back into the drawing receptacle for future drawings.

NEW SECTION

WAC 230-11-060 Using a second element of chance in alternative drawing format raffles. Licensees may use second elements of chance in alternative drawing format raffles to:

(1) Determine the final prize winner. For example: Ten finalists are drawn and each finalist chooses a key. The finalist with the key that starts the vehicle wins; or

(2) Determine which prize is awarded among a group of prizes. For example: Each winner selects one of three keys and each wins the contents of the safe which the key unlocks; or

(3) Increase the prize award. For example: The winning ticket matches a predetermined sequence of numbers and wins an additional prize.

PRIZES

NEW SECTION

WAC 230-11-065 Own prizes for raffles before drawing date. (1) Organizations must own the prizes offered to winners before the date of the drawing. However, if the winner has an option to receive a cash prize instead of the merchandise, the organization may enter into a contract to purchase the merchandise prize after the winner chooses his or her option. The organization must have the funds to make the purchase on account before the date of the drawing.

(2) At the time and date of any raffle drawing, the organization must have on deposit an unencumbered amount of money that is equal to or greater than all cash prizes being offered in the raffle. The organization must have these funds deposited in the gambling receipts account, if required, or in a recognized Washington state depository authorized to receive funds. The organization must not reduce the balance of funds available from this account below the required amount before awarding the prize(s).

(3) Raffle prizes must:

(a) Be available at the time and place of the drawing; and

(b) If cash, be United States currency or an equivalent amount of negotiable instruments; and

(c) For licensees, not exceed forty thousand dollars per prize or eighty thousand dollars in total raffle prizes in a license year. The commissioners may vote to permit licensees to exceed these limits on specific occasions if the licensees show good cause in writing.

CONDUCTING A MEMBERS-ONLY RAFFLE

NEW SECTION

WAC 230-11-070 Defining "members-only" raffles. A "members-only raffle" means a raffle where the organization sells tickets only to full and regular members and a limited number of guests. All aspects of the raffle must take place during the same event at the same location. Winners must be determined from among those members and guests that have purchased tickets.

NEW SECTION

WAC 230-11-075 Limit number of guests for members-only raffles. The total number of guests participating in a raffle must not exceed twenty-five percent of the total attendance of the meeting. The organization must maintain records to show compliance with this requirement.

NEW SECTION

WAC 230-11-080 Post rules of play for members-only raffles. Organizations must post a sign at each point

where they sell tickets to provide participants with all rules of play or print the required disclosures on the raffle ticket.

NEW SECTION

WAC 230-11-085 Modified and discounted pricing plans for tickets for members-only raffles. (1) Licensees may use modified ticket pricing plans at members-only raffles when gross revenues do not exceed five thousand five dollars. One type of modified pricing plan is a penny raffle. A penny raffle is a raffle where licensees sell five hundred consecutively numbered tickets. Participants randomly choose tickets and pay the consecutive number of the ticket multiplied by a predetermined cost, for instance, one penny.

(2) In modified pricing plans, licensees may sell tickets to enter a raffle for different values, not to exceed ten dollars for a single ticket, if the licensee:

(a) Tells the players the pricing plan before selling them a ticket to participate. The licensee must tell the player the total number of tickets in the population available and the number of tickets at each price level; and

(b) Allows participants to randomly select their ticket from the population of remaining tickets and pay the amount printed on the ticket they select; and

(c) Establishes records for an adequate audit trail to determine gross gambling receipts; and

(d) Holds no more than two such drawings during a meeting or event; and

(e) Sells multiple tickets to enter one or more drawings as a package and the total price of the package must not exceed twenty-five dollars.

NEW SECTION

WAC 230-11-086 Discounted pricing plans for tickets to members-only raffles. In discounted pricing plans, licensees may sell tickets for a discounted price based on the number of tickets a player purchases if:

(1) The amount of the discount is set before any raffle tickets are sold; and

(2) Participants are allowed to purchase a single ticket; and

(3) There is only one discount plan for each raffle; and

(4) The cost of a single ticket, without a discount, does not exceed ten dollars; and

(5) The total cost of a discount package does not exceed twenty-five dollars; and

(6) The cost of a single ticket is printed on each ticket (for example, one dollar each); and

(7) The discounted tickets are identified by a unique ticket audit numbering system; and

(8) The licensee establishes an audit system that includes internal controls and procedures to determine gross gambling receipts from the sale of tickets using a discounted pricing plan.

NEW SECTION

WAC 230-11-087 Other pricing plans for members-only raffles. (1) Licensees may sell multiple tickets to enter one or more drawings as a package if the total price of the package does not exceed twenty-five dollars.

(2) Licensees may include tickets to enter a raffle as a part of a package that includes dues, entertainment, or other fund-raising activities if:

(a) The package discloses the value of each component of the package to the purchaser; and

(b) The value of each individual raffle ticket does not exceed twenty-five dollars.

NEW SECTION

WAC 230-11-090 Authorized alternative drawing formats for members-only raffles. Licensees may use alternative drawing formats set forth in WAC 230-11-055 for members-only raffles as long as the licensee meets all requirements set out in that rule. Licensees also may use the following alternative drawing formats or similar random selection processes for members-only raffles:

Mock animal races.

(1) The licensee sells participants consecutively numbered tickets to wager on a specific mock animal in a field of mock animal racers, typically five to ten racers. The mock animals race in individual lanes divided into equal spaces or squares; for example, bingo boards are sometimes used as race lanes. Animals move forward based on the numbers rolled on dice or balls drawn from a set of bingo balls. The first mock animal to cross the finish line is the winner. All winning ticket holders split the prize pool or the licensee may hold a drawing of winning tickets to determine a single winner.

Video races.

(2) The licensee sells participants consecutively numbered tickets/race forms to wager on the outcome of an unknown videotaped race, typically horse races. The previously taped races must be obtained from an outside source and participants must have no knowledge of the specific race outcome before conducting the video race drawing. Participants wager on the specific racers, identified by numbers, or a specific race lane. All participants holding a winning race number ticket or winning lane number ticket are the winners. All winning ticket holders split the prize pool or the licensee may hold a drawing of winning tickets to determine a single winner.

Paddle wheel raffles.

(3) The licensee sells participants numbered paddles or numbered tickets that correspond to numbered spaces on a balanced, spinning wheel. The licensee spins the wheel at least one full revolution. The ticket that matches the number that the wheel stops on is the winning ticket.

Card deck raffle.

(4) The licensee sells participants a single playing card or similar object. The card is then torn or cut in half and one half is placed in the drawing receptacle. The participant holds the other half until the drawing takes place. The holder of the matching half to that drawn is the winner.

RECORDKEEPING FOR RAFFLES

NEW SECTION

WAC 230-11-095 Recordkeeping requirements for Class A through D licensees and unlicensed raffles. Class A through D licensed raffles and unlicensed raffles under the authority of RCW 9.46.0315 or 9.46.0321 must keep a record by month of the following:

(1) Gross receipts; and

(2) Prizes paid; and

(3) Net income; and

(4) Documentation of expenses; and

(5) Documentation of how the proceeds were used.

NEW SECTION

WAC 230-11-100 Recordkeeping requirements for Class E and F licensees and raffles using alternative drawing formats. Licensees conducting Class E or Class F raffles or conducting raffles using alternative drawing formats must prepare a detailed record for each raffle they conduct. Licensees must:

(1) Record all data required in the standard format we provide; and

(2) Maintain the following:

(a) Validated deposit receipts for each deposit of raffle proceeds; and

(b) All winning tickets; and

(c) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and

(d) All ticket stubs for raffles that participants are not required to be present at the drawing; and

(e) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars; and

(f) Invoices and other documentation recording the purchase or receipt of prizes; and

(g) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and

(3) Complete all records no later than thirty days following the drawing.

NEW SECTION

WAC 230-11-105 Retain and store raffle records. (1) Records for unlicensed raffles must be kept for one year following the date of the raffle drawing.

(2) Records for licensed raffles must be kept for three years from the end of the licensees' fiscal year in which the raffle was completed.

(3) Organizations must keep all records at the main administrative or business office of all organizations that are located in Washington and have the records available for our review or audit.

(4) Organizations that do not have an administrative or business office must have and designate a records custodian that resides in Washington.

(5) We may allow an organization to maintain records outside the state of Washington if the organization submits a written request. We may withdraw this permission at any time.

WSR 06-20-049
PERMANENT RULES
HOME CARE QUALITY AUTHORITY

[Filed September 27, 2006, 11:54 a.m., effective October 28, 2006]

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

Purpose: The purpose of this filing is to amend the language in WAC 257-10-040 to reflect the change in frequency of the home care quality authority (HCQA) board meetings. The HCQA board no longer meets on a monthly basis. HCQA scheduled board meetings will be specified in the Washington State Register.

Citation of Existing Rules Affected by this Order: Amending WAC 257-01-040.

Statutory Authority for Adoption: RCW 74.39A.280(3), 74.39A.230 (1) and (2).

Adopted under notice filed as WSR 06-07-042 on March 8, 2006.

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

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

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

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

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

Date Adopted: September 27, 2006.

Sherri Wills-Green
Interim Executive Director

AMENDATORY SECTION (Amending WSR 04-20-110, filed 10/6/04, effective 11/6/04)

WAC 257-01-040 Board meetings. Meetings of the authority shall normally be held ((~~monthly~~)) at the date, time, and place to be set by the board and as published in the *Washington State Register*. Additional public meetings necessary to discharge the business of the authority may be called from time to time by the chair or by a quorum of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). A simple majority of the board constitutes a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

Written communications intended for board consideration or action shall be filed with the authority's administrative office.

WSR 06-20-061
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed September 29, 2006, 10:41 a.m., effective November 1, 2006]

Effective Date of Rule: November 1, 2006.

Purpose: To increase the fees notaries public may charge for their services.

Citation of Existing Rules Affected by this Order: Amending WAC 308-30-020.

Statutory Authority for Adoption: RCW 42.44.190.

Adopted under notice filed as WSR 06-17-154 on August 22, 2006.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: September 29, 2005 [2006].

Nancy Skewis
Administrator

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

WAC 308-30-020 ((~~Maximum fees that may be charged by notaries public.~~)) What fees may a notary public charge? ((~~A notary public need not charge fees for notarial services. When fees are charged, notaries shall display in a prominent place, at the place of business, to the public, an English language schedule of fees for notarial acts. No part of the displayed notarial fee schedule may be printed in smaller than 10 pt. type. The following are the maximum fees that may be charged by notaries public for the following services:~~

~~(1) Witnessing or attesting a signature with or without seal or stamp, five dollars.~~

~~(2) Taking acknowledgment, or verification upon oath or affirmation, five dollars for the first two persons and five dollars for each additional person.~~

~~(3) Certifying or attesting a copy, with or without seal or stamp, five dollars.~~

~~(4) Receiving or noting a protest of a negotiable instrument, five dollars.~~

~~(5) Being present at demand, tender, or deposit, and noting the same, besides mileage at the rate of one dollar per mile, five dollars.~~

~~(6) For copying any instrument or record, per page, besides certificate and seal or stamp, one dollar for the first page and twenty-five cents for each remaining page.~~

~~(7) Administering an oath or affirmation, five dollars.~~

~~(8) Certifying that an event has occurred or an act has been performed, five dollars.~~)) (1) The maximum fees a notary may charge for notarial acts are:

NOTARIAL ACT	FEE
Witnessing or attesting a signature	$10.00
Taking acknowledgement or verification upon oath or affirmation	$10.00
Certifying or attesting a copy	$10.00
Receiving or noting a protest of a negotiable instrument	$10.00
Being present at demand, tender, or deposit, and noting the same	$10.00
Administering an oath or affirmation	$10.00
Certifying that an event has occurred or an act has been performed	$10.00

(2) A notary public need not charge for notarial acts. A notary who chooses to charge for notarial acts shall conspicuously display in their place of business, or present to each customer outside their business, an English-language schedule of fees for notarial acts. No part of the displayed notarial fee schedule may be printed in smaller than 10-point type.

(3) A notary may charge actual costs of copying any instrument or record.

(4) A notary may charge a travel fee when traveling to perform a notarial act if:

(a) The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary explains to the person requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

WSR 06-20-062
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 29, 2006, 11:14 a.m., effective November 1, 2006]

Effective Date of Rule: November 1, 2006.

Purpose: The department is amending rules in chapter 388-410 WAC on when the department establishes and collects overpayments for the Washington Basic Food program and the Washington combined application project (WASHCAP) food assistance.

These changes are to meet requirements for the food stamp program under 7 C.F.R. 273.18, Claims against households.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0020, 388-410-0025, 388-410-0030, and 388-410-0033.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 06-17-176 on August 23, 2006.

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

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

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

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

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

Date Adopted: September 27, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0020 What happens if I ((~~get~~)) receive more ((~~food assistance~~)) Basic Food or WASHCAP benefits than I am supposed to ((~~get~~)) receive? (1) If you ((~~get~~)) receive more ((~~assistance~~)) Basic Food or WASHCAP benefits than you were supposed to ((~~get~~)) receive, your assistance unit (AU) has ((~~a food assistance~~)) an overpayment. There are three types of ((~~food assistance~~)) overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a food stamp rule on purpose. If you have an IPV, you could be disqualified from receiving ((~~food assistance~~)) Basic Food or WASHCAP benefits under chapter 388-446 WAC.

(2) ((~~The department~~)) We must ((~~set up and start collecting~~)) discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not ((~~meet both of the time frames~~)) discover that you received too many benefits within the timeframe described below based on the type of overpayment ((~~your AU has~~)), we will not set up an overpayment:

(a) **Administrative error overpayment:**	(b) **Inadvertent household error overpayment:**	(c) **Intentional program violation overpayment:**
We must discover the overpayment within twelve months of the date you were overpaid((~~; and~~)).	We must discover the overpayment within twenty-four months of the date you were overpaid((~~; and~~)).	We must discover the overpayment within seventy-two months of the date you were overpaid((~~; and~~)).
((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.~~))	((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.~~))	((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that were discovered you were overpaid.~~))

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit? If your assistance unit (AU) ((~~gets~~)) received more ((~~food assistance~~)) Basic Food or WASHCAP benefits than it was supposed to ((~~get~~)) receive, your AU has an overpayment. If you have an overpayment, ((~~the department determines~~)) we determine the amount you were overpaid and ((~~sets~~)) set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

AMENDATORY SECTION (Amending WSR 03-21-027, filed 10/7/03, effective 12/1/03)

WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment? (1) ((~~The department calculates~~)) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

(a) The benefits your assistance unit (AU) received; and

(b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and WAC 388-418-0007, you do not ((~~get~~)) receive the earned income ((~~disregard~~)) deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you ((~~were underpaid~~)) too few Basic Food or WASHCAP benefits for a period of time, we will use ((~~these benefits~~)) the amount we underpaid your AU to reduce your overpayment if:

(a) We have **not** already issued you benefits to replace what you were underpaid; and

(b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) You currently ((~~get~~)) receive Basic Food or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently ((~~get~~)) receive Basic Food or WASHCAP benefits.

(6) ((~~We do not set up inadvertent household error or administrative error overpayment if:~~

~~(a) We cannot find the responsible AU members; or~~

~~(b) We have~~)) If you have an inadvertent household error that we referred ((~~your inadvertent household error~~)) for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

(a) Your AU has repaid the overpayment; or

(b) ((~~We cannot find the responsible AU members; or~~

~~(c)~~)) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0033 How and when does the department collect a ((~~food assistance~~)) Basic Food or WASHCAP overpayment? (1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular ((~~installments~~)) payments under ((~~a payment schedule as specified~~)) a scheduled repayment agreement as described in subsection ((~~(3)~~)) (4) of this section; or

(d) Having your current ((~~food assistance~~)) Basic Food or WASHCAP benefits reduced.

((~~(2)~~)) (3) If you have an inactive EBT account and we cancelled ((~~food assistance~~)) Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled ((~~funds~~)) benefits to reduce the amount of your overpayment.

((~~(3)~~)) (4) If your AU currently ((~~gets food assistance~~)) receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly ((~~installments that you agree on with the department~~)) payments. The ((~~agreement~~)) payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

((~~(4)~~)) (5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits ((~~if you do not~~)) unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Request a ((~~fair~~)) hearing and continued benefits within ninety days of the date you received your collection action notice.

((~~(5)~~)) (6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you ((~~get~~)) receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

((~~(6)~~)) (7) If you ((~~get~~)) receive ongoing ((~~food assistance~~)) Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first ((~~food assistance~~)) Basic Food or WASHCAP allotment when we first approve your application for ((~~food assistance~~)) benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

(i) Ten percent of your monthly benefits; or

(ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

(i) Twenty percent of your monthly benefits; or

(ii) Twenty dollars per month.

((~~(7)~~)) (8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current ((~~food assistance~~)) benefits unless you:

(a) ((~~Catch up with all overdue payments~~)) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

((~~(8)~~)) (9) If ((~~you no longer get food assistance, we will refer your overpayment for federal collection if the~~)) your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, social security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date; ((~~or~~))

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Meet the requirements of your scheduled repayment agreement.

(((~~(9)~~))) (10) If you no longer ((~~get food assistance~~)) receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(((~~(10)~~))) (11) We suspend collection on an overpayment if:

(a) We cannot find the responsible AU members; or

(b) The cost of collecting the overpayment would likely be more than the amount we would recover.

(((~~(11)~~))) (12) We can negotiate the amount of an overpayment if the amount you offer is close to what we could expect to ((~~get~~)) receive from you before we can no longer legally collect the overpayment from you.

(((~~(12)~~))) (13) We write off unpaid overpayments and release any related liens when:

(a) We can not possibly collect any more funds;

(b) We agreed to accept a partial payment that left an unpaid balance after this payment; or

(c) There is an unpaid balance left after an overpayment case has been suspended for three consecutive years unless a collection may be possible through the Treasury Offset Program.

(((~~(13)~~))) (14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

WSR 06-20-063
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 29, 2006, 12:15 p.m., effective October 30, 2006]

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

Purpose: To comply with RCW 28A.410.225 by creating two new sections in chapter 181-82A WAC to create a deaf education specialty endorsement.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-16-140 on August 2, 2006.

Changes Other than Editing from Proposed to Adopted Version: Other than reorganizing the sections to be consistent with other similar sections of WAC, the PESB also added language to better meet the intent of the RCW specific to teachers receiving a deaf education specialty endorsement. This language is under WAC 181-82A-208 (1)(a) and (b).

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail nnishidar@ospi.wednet.edu.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 21, 2006.

Nasue Nishida
Policy and Research Analyst

NEW SECTION

WAC 181-82A-207 Specialty endorsement program requirements. Specialty endorsements prepare a teacher candidate to work with a specific student population, and are created to help candidates specialize beyond the required certificate endorsements as stated in WAC 181-82A-202. Specialty endorsements have unique endorsement competencies not found in any of the existing endorsements.

(1) Candidates completing specialty endorsements shall complete the following:

(a) Complete a college/university teacher specialty endorsement program approved by the professional educator standards board pursuant to chapter 181-78A WAC, which includes methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter; and

(b) Pass the subject knowledge test for the specialty endorsement approved by the professional educator standards board.

(2) Out-of-state candidates shall comply with WAC 181-79A-257.

(3) Course work used to meet specialty endorsement requirements must be completed through a regionally accredited college/university.

(4) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved specialty endorsement program.

NEW SECTION

WAC 181-82A-208 Specialty endorsements. The following specialty endorsements may be added to an existing endorsed teaching certificate: Deaf education (per RCW 28A.410.225).

(1) This specialty endorsement is required for teachers who will be working almost exclusively with students who are deaf or hard of hearing.

(2) Program and test requirements are waived and this specialty endorsement granted if a candidate possesses a bac-

calaureate or master's degree in deaf education from a teacher training program approved by the council on education of the deaf.

WSR 06-20-078
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 2, 2006, 8:36 a.m., effective January 1, 2007]

Effective Date of Rule: January 1, 2007.

Purpose: WAC 246-272A-990 On-site sewage system fees and 246-272B-990 Large on-site sewage system fees, this rule adoption will increase fees to support the department of health's on-site sewage system program activities. The legislature provided an exemption to exceed fiscal growth factor limits for these fees in chapter 518, Laws of 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 246-272A-990 and 246-272B-990.

Statutory Authority for Adoption: RCW 43.70.110 and 43.70.250.

Adopted under notice filed as WSR 06-16-134 on August 2, 2006.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 26, 2006.

B. White
for M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

WAC 246-272A-990 Fees. ((~~Fees will be set by DOH in a separate rule making. We will ask to recodify this section so that it will be in the new chapter until the new fees can be established.~~)) (1) Fees for proprietary product registration are as follows:

Category	Base Fee	Hourly Fee
Product registration - treatment or distribution - initial application	$400.00	$100.00 per hour if the application requires more than four hours of review time
Transition from list of approved products and systems (both treatment and distribution products)	$200.00	$100.00 per hour if the application requires more than two hours of review time
Annual registration renewal	$100.00	

(2) The base fee is required at the time of application. Any hourly fees for additional review time must be paid in full before the product will be registered.

AMENDATORY SECTION (Amending WSR 03-22-098, filed 11/5/03, effective 12/6/03)

WAC 246-272B-990 Fees. ((~~The minimum fee for required review of larger on-site system's engineering reports and plans and specifications shall be four hundred dollars. If review time exceeds eight hours, fifty dollars for each additional hour or part of an hour shall be added to the minimum fee. The fee for presite inspections for larger on-site systems shall be one hundred dollars per visit. The fee for final inspections of larger on-site systems shall be one hundred dollars per site visit.~~)) (1) Plan review and inspection. The following fees apply for LOSS application, review and inspection:

Category	Base Fee	Hourly Fee
Project review fee	$800.00	$100.00 per hour if the application requires more than eight hours review time
Inspections (presite and final)	$500.00 per visit	N/A

The base fee is required at the time of application. Any hourly fees for additional review time must be paid in full before final approval is granted.

(2) Operating permits. The following fees apply for annual LOSS operating permits and renewals.

Category	Base Fee	System Volume Fee
Initial operating permit and annual renewal - unconditional systems	$150.00	$.01 for each gallon of daily approved design flow
Annual renewal "noncompliant - conditional systems"	$150.00	$.02 for each gallon of daily approved design flow

WSR 06-20-099
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees' Benefits Board)

[Order 06-08—Filed October 3, 2006, 12:58 p.m., effective November 3, 2006]

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

Purpose: The purpose of amending the existing rule is to implement provisions of chapter 345, Laws of 2006, which changed the eligibility criteria for surviving dependents of emergency service personnel killed in the line of duty to include survivors of emergency service employees who were killed in the line of duty prior to January 1, 1998.

Citation of Existing Rules Affected by this Order: Amending WAC 182-12-250.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: RCW 41.05.080.

Adopted under notice filed as WSR 06-16-107 on August 1, 2006.

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

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

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

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

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

Date Adopted: October 3, 2006.

Beth Dupre
Deputy Administrator

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-250 Insurance eligibility for surviving dependents of emergency service personnel killed in the line of duty. Surviving dependents of emergency service personnel who ((~~were~~)) are killed in the line of duty ((~~on or after January 1, 1998,~~)) are eligible ((~~to participate in~~)) for health plan coverage administered by the HCA.

(1) This section applies to the dependents of emergency service personnel "killed in the line of duty" as determined ((~~consistent with Title 51 RCW~~)) by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers((~~,~~)) and fire fighters as defined in RCW 41.26.030, and reserve officers((~~,~~)) and fire fighters as defined in RCW ((~~41.26.030 and~~)) 41.24.010.

(3) "Surviving dependent" means:

(a) A lawful spouse ((~~or~~));

(b) An ex-spouse as defined in RCW 41.26.162; ((~~and~~ ~~(b)~~)) (c) Dependent children. The term "children" includes the following unmarried ((~~natural children, stepchildren and legally adopted~~)) children of the emergency service worker who are: Under the age of twenty or under the age of twenty-four ((~~for~~)) if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing. Disabled dependents as defined in RCW 41.26.030 (7) are eligible at any age. "Children" are defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) ((~~Premium rates will be subsidized consistent with rates established by PEBB for non-Medicare retirees under RCW 41.05.022 and for Medicare-entitled retirees under RCW 41.05.085.~~

~~(5)~~)) Surviving dependents ((~~that~~)) who are entitled to Medicare((~~-entitled~~)) must enroll in both parts A and B of Medicare.

(((~~(6)~~))) (5) The surviving dependent must send a completed enrollment ((~~application~~)) form (to either enroll or defer public employees' benefits board (PEBB) coverage) to PEBB benefits services department no later than ((~~sixty~~)) one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day ((~~of~~)) the surviving dependent was covered under any ((~~coverage extended by the employing agency of~~)) health plan through the emergency service ((~~employee who died in the line of duty~~)) worker's employer; or

(((~~(b)~~))) (d) The last day ((~~of coverage extended through~~)) the surviving dependent was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from ((~~any employing agency~~)) the emergency service worker's employer.

(6) Survivors that do not choose to defer PEBB coverage may choose among the following options for when their PEBB coverage will begin:

(a) June 1, 2006, for survivors whose enrollment form is received by PEBB benefit services no later than September 1, 2006;

(b) The first of the month that is no more than sixty days before the date that PEBB benefit services receives the enrollment form (for example, if PEBB benefit services receives the enrollment form on August 29, the survivor may request coverage to begin on July 1); or

(c) The first of the month after the date that PEBB benefit services receives the enrollment form.

For surviving dependents who enroll, monthly premiums for PEBB health plan coverage must be paid by the survivor except as provided in RCW 41.26.510(5).

(7) Surviving dependents must choose one of the following two options ((~~for maintaining~~)) to maintain eligibility for ((~~participation under~~)) PEBB health plan coverage:

(a) Enroll in PEBB health plan coverage:

(i) ((~~Enrollment~~)) Enroll in ((~~the~~)) medical ((~~portion of PEBB health plan~~)) coverage ((~~is required.~~)); or

(ii) ((~~Enrollment in the dental portion of PEBB health plan coverage is optional. Once enrolled in~~)) Enroll in medical and dental coverage.

(iii) The ((~~person~~)) dependent must ((~~maintain enrollment~~)) stay enrolled in dental coverage for ((~~a minimum of~~)) at least two years before dental coverage can be dropped.

((~~(iii)~~)) (iv) Dental only coverage is not ((~~available~~)) an option.

(b) Defer enrollment:

(i) Surviving dependents may defer enrollment in PEBB health plan coverage if they are enrolled in ((~~employer sponsored~~)) comprehensive medical coverage through ((~~their employment~~)) an employer.

(ii) Surviving dependents may enroll in PEBB health plan coverage when ((~~their~~)) they lose employer ((~~sponsored~~)) coverage ((~~ends~~)). ((~~Proof of continuous enrollment~~)) Dependents will need to prove they were continuously enrolled in ((~~other~~)) comprehensive ((~~employer sponsored~~)) coverage ((~~must be submitted with the application~~)) through an employer when applying for ((~~enrollment to the HCA~~)) PEBB coverage, and apply within sixty days after the date ((~~that~~)) their other coverage ended.

(iii) PEBB health plan coverage and premiums will begin the first day of the month following the day that the other coverage ended for dependents that reenroll.

(8) ((~~Enrollees~~)) Surviving dependents may change their health ((~~carrier selection~~)) plan during open enrollment. In addition to open enrollment, ((~~enrollees~~)) they may change health ((~~carriers~~)) plans if they move out of their health ((~~carrier's~~)) plan's service area or into a service area where a health ((~~carrier~~)) plan that was not previously offered is now available.

(9) Surviving dependents may not add new dependents acquired through birth, marriage, or establishment of a qualified same-sex domestic partnership.

(10) Surviving dependents will ((~~forfeit~~)) lose their right to enroll in PEBB health plan coverage if they:

(a) Do not ((~~make application~~)) apply to enroll or defer PEBB ((~~before~~)) health plan coverage within the ((~~date specified~~)) timelines stated in subsection ((~~(6)~~)) (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive coverage through an employer ((~~sponsored medical coverage~~)) during the deferral period, as provided in subsection (7)(b)(i) of this section.

WSR 06-20-107
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed October 4, 2006, 8:44 a.m., effective November 4, 2006]

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

Purpose: To clarify the requirements and expectations for pilot trainees while engaged in a training program and to define the criteria for training stipend eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-078 Training program.

Statutory Authority for Adoption: RCW 88.16.105.

Adopted under notice filed as WSR 06-16-041 on July 26, 2006.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule reflects additional language in subsection (10) entitled "Stipend" which further clarifies that a certain minimum number of training trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. It is also specified that only trips required by the training program can be used to satisfy this minimum.

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

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

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

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

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

Date Adopted: September 14, 2006.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, applicants pursuing a pilot license must enter and successfully complete a training program specified by the board.

(1) Notification. Applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, an applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the applicant to ensure that the board has a current mailing address at all times. If an applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the applicant's behalf regarding such notice. If notice sent to the address provided by the applicant is returned after three attempts to deliver, that applicant will be skipped and the next applicant on the list will be contacted for entry into the training pro-

gram. A person so skipped will remain next on the list. An applicant or his designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

(2) Entry. At such time that the board chooses to start an applicant in the training program, notification shall be given to the first person on the list. Applicants shall be eligible in the order of their total combined scores on the written examination and simulator evaluation. Any applicant who refuses entry into the program will be removed from the waiting list with no further obligation by the board to offer a position in the training program. An applicant who is not able to start the training program within two months of the board's notice may, with written consent of the board, delay entry into the training program. The board will then give notice to the next applicant on the list to enter the training program. The applicant who delays entry, shall remain eligible for the next position in the training program, provided that the next position becomes available within the earlier of:

(a) Four years from the applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination. Applicants not able to start in the training program within two months of the board's notice of eligibility and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for the training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license applicants must pass a physical examination by a physician designated by the board and in accordance with the requirements of WAC 363-116-120 for initial applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the applicant's fitness to pilot. The physical examination must be taken not more than forty-five days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within forty-five days prior to the anniversary date of that license. Training license physicals will be at the expense of the applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date and fee established by the board. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into the training program as set forth in this section, the applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that applicant. The training program shall be tailored to the ability and experience of the individual applicant and shall consist of observation trips, training trips in which the applicant pilots the vessel under the supervision of licensed pilots, ship assist tug trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the applicant. If the applicant agrees in writing to the training program, the board shall issue a training license to the applicant, which license shall authorize the applicant to take such actions as are contained in the training program. If the applicant does not agree to the terms of the training program in writing within fifteen business days of it being received by the applicant, that applicant shall no longer be eligible for entry into the training program and the board may give notice to the next available applicant that he/she is eligible for the training program.

(5) Initial evaluation.

(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed six months if the pilot trainee is on stipend and nine months if not on stipend. The initial evaluation shall:

(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;

(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examination provided by the board as to the conditions found in such waterway, channel or tributary;

(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and

(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.

(b) As a condition of completing the initial evaluation, the pilot trainee shall:

(i) Pass any required local knowledge examination given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any thirty day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and

(ii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in at least one route in the pilotage district in which the pilot applicant seeks a license.

(c) After completion of the initial evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program.

(6) Specification of trips. To the extent possible, the training program shall provide a wide variety of assignments,

observation and training trips. The training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, applicants taking an examination before July 1, 2008, shall have a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound applicants shall have a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for applicants in the Grays Harbor pilotage district. The board will ensure that during the training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. The training program shall provide for the education and testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee and recommended to the board for adoption and shall be tailored to the needs of the individual pilot trainee. Prior to the completion of the training program, the board, or its designee, shall give a local knowledge examination(s) to the pilot trainees who shall be required to pass such examination(s) before completing the training program. Pilot trainees taking an examination before July 1, 2008, shall not be required to take local examinations. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any thirty day period and all required local knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

(a) Area geography;

(b) Waterway configurations including channel depths, widths and other characteristics;

(c) Hydrology and hydraulics of large ships in shallow water and narrow channels;

(d) Tides and currents;

(e) Winds and weather;

(f) Local aids to navigation;

(g) Bottom composition;

(h) Local docks, berths and other marine facilities including length, least depths and other characteristics;

(i) Mooring line procedures;

(j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;

(k) Vessel traffic system;

(l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;

(m) Air draft and keel clearances;

(n) Submerged cable and pipeline areas;

(o) Overhead cable areas and clearances;

(p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;

(q) Lock characteristics, rules and regulations;

(r) Commonly used anchorage areas;

(s) Danger zone and restricted area regulations;

(t) Regulated navigation areas;

(u) Naval operation area regulations;

(v) Maneuvering behavior for different vessel types;

(w) Impact of propulsion and maneuvering machinery on vessel navigation;

(x) Local ship assist and escort tug characteristics;

(y) Tanker escort rules - state and federal;

(z) Use of anchors and knowledge of ground tackle;

(aa) Applicable federal and state marine and environmental safety law requirements;

(bb) Marine security and safety zone concerns;

(cc) Marine port security regulations;

(dd) Harbor safety plan and harbor regulations; and

(ee) Chapter 88.16 RCW and other relevant state and federal regulations.

(8) Length.

(a) In the Puget Sound pilotage district, for applicants taking an examination before July 1, 2008, the minimum length of the training program shall be seven months. For applicants who take an examination on or after July 1, 2008, the minimum length of the training program shall be eight months. The maximum length of the training program shall be thirty-six months if the applicant elects to receive a stipend. The length of the training program shall be established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules in place by federal or state law or regulation. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilotage assignment. Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the applicant shall indicate whether he/she wishes to receive a stipend during the training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, applicants will agree to forego during the training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of the training program. With the consent of the board and the restructuring of the training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during the training program. The stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge fee in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the

expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(i) The stipend will be paid on a full calendar month basis except that prorations may be used for the first and last months in which the trainee is found unfit for duty and in which the trainee changes to a nonstipend status.

(ii) Determinations as to stipend entitlement will be made on a calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(A) For the first and last months of the training program (unless the training program starts on the first or ends on the last day of a month); or

(B) The trainee is deemed unfit for duty by the board during a training month; or

(C) A trainee requests a change to a nonstipend status as set forth in (a)(vii) of this subsection.

(iii) A certain minimum number of trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. Only trips required by the training program can be used to satisfy this minimum. Trips will be documented at the end of each month.

(iv) It is the trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the trainee but not taken.

(v) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple trainees. Generally, the trainee who finished the qualifying examination and simulator evaluation with the highest score has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any trainee's initial evaluation program;

(B) When it is necessary to spread hard-to-get trips among trainees so that as many as possible complete required trips on time. If a trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under (a)(iii) of this subsection. However, the trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(vi) If a trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (trainees) from devoting themselves on a full-time basis to the completion of the training program."

(vii) If a trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the fee or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharge fees. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one public representative member of the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. The board shall prepare different forms to be used by supervising pilots who are training pilots and those who are not. Evaluation forms prepared by licensed pilots who are not training pilots shall be

used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the length of the training program.

(14) Removal. A pilot trainee may be removed from the training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in the training program;

(f) Inadequate performance on examinations or other actions required by the training program;

(g) Failure to demonstrate the superior skills required in the initial evaluation;

(h) Inadequate performance on training trips; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of the training program shall include the requirement that the pilot trainee:

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

WSR 06-20-118
PERMANENT RULES
HIGHER EDUCATION COORDINATING BOARD

[Filed October 4, 2006, 10:59 a.m., effective November 4, 2006]

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

Purpose: To amend WAC 250-18-020. ESHB 1607 changed the eligibility for "resident" status for tuition and fee purposes of tribal members. The rule change would instruct institutions to reference the official list of federally recognized Washington tribes maintained by the governor's office of Indian affairs to determine eligibility. The list of federally recognized Washington tribes may be found online at http://www.goia.wa.gov/.

Citation of Existing Rules Affected by this Order: Amending WAC 250-18-020.

Statutory Authority for Adoption: RCW 28B.15.015.

Adopted under notice filed as WSR 06-12-062 on June 5, 2006.

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

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

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

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

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

Date Adopted: September 28, 2006.

Randy Spaulding
Acting 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) Nooksaek 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 Reservation;~~

~~(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 Reservation;~~

~~(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 maintained 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, pensions, 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.