

**WSR 08-16-040**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 29, 2008, 2:26 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-102 Resale certificates (Rule 102). Rule 102 explains the resale certificate and conditions under which a buyer may furnish a resale certificate to a seller. The rule includes tax reporting information for persons who purchase articles or services for dual purposes.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY October 6, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-102 (Rule 102) explains that a resale certificate provided for multiple purchases over a period must be renewed every four years. The department is proposing to amend Rule 102 to recognize that the requirement to renew a resale certificate every four years no longer applies. As of July 1, 2008, a resale certificate continues as long as the buyer has a "recurring business relationship" with the seller, which is defined by law as making at least one purchase from the seller within a period of twelve consecutive months.

While there is no longer a requirement to renew a resale certificate if the seller can substantiate that a recurring business relationship exists, the rule also explains that the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. Some language in the existing rule has been relocated within the rule to provide the information in a more useful manner, or eliminated as unnecessary. The sample resale certificate has been eliminated and the reader is referred to telephone information center, and mailing address for a certificate to be completed.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Statutory Authority for Adoption: RCW 82.32.300, 82.32.291, and 82.01.060(2).

Statute Being Implemented: RCW 82.04.470 and 82.32.291.

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

Name of Proponent: [Department of revenue], governmental.

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July 29, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-17-024, filed 8/9/04, effective 9/9/04)

**WAC 458-20-102 Resale certificates.** (1) **Introduction.** This (~~rule~~) section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This (~~rule~~) section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(b) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions (~~for a period not to exceed four years from the effective date~~) as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. ((In addition,)) As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been cancelled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection (~~((4)(b) of this rule)),~~ paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities** (~~((for acceptance of resale certificates))~~). When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within ~~((a reasonable time))~~ one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper. ~~((The resale certificate will be considered to be obtained within a reasonable time of the sale if it is received within one hundred twenty days of the sale or sales in question.))~~

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of

"Ace Used Cars" would generally not be expected to be in the business of selling furniture:

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to ~~((e))~~ (f) of this subsection in event of an audit situation.

~~((a))~~ **(c) Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing ~~((to be considered obtained within a reasonable time of the sale))~~. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request ~~((to consider the resale certificate obtained in a reasonable time after the sale))~~, even though the construction project may not be completed at that time and additional draw requests will follow.

~~((b))~~ **(d) Requirements for resale certificates obtained after ~~((reasonable time has))~~ one hundred twenty days have passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within ~~((a reasonable period of time))~~ **one hundred twenty days** is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

~~((e))~~ **(e) Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN

discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question. ~~((As the provisions of this resale certificate apply to both past and future sales transactions, the certificate must be renewed no later than December 31st four years from the date the resale certificate became effective.))~~

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to ~~((d))~~ (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

~~((d))~~ **Seller's liability.** ~~If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this rule), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this rule. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. This evidence must be presented within the statutory time limitations provided by RCW 82.32.060. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:~~

~~(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;~~

~~(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer;~~

~~(iii) The quantity and frequency of items sold. The number of items sold and the frequency of sales must indicate that the buyer is purchasing such items at wholesale; and~~

~~(iv) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.~~

~~(e)) (f) Additional time to secure documentation ((after)) in audit situation.~~ If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed ~~((thirty))~~ one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales. ~~((The audit report will also not be delayed because the time allotted to the seller expires prior to one hundred twenty days from the date of the sale or sales in question.~~

~~(f) Seller's personal liability.~~ If the seller is unable to provide proper documentation, or unable to prove by facts and circumstances that the sales in question are wholesale sales, the seller becomes personally liable for the taxes in question. If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. ~~(See WAC 458-20-229.))~~

**(6) Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this ~~((rule))~~ section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this ~~((rule))~~ section to determine whether they may give a resale certificate to the seller.

**(7) Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale cer-

tificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate ~~((may be in the suggested form shown below, which))~~ is available on the department's ~~((home page))~~ internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the ~~((following))~~ same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller~~((:))~~.

~~((The undersigned buyer hereby certifies that the tangible personal property or services specified below will be purchased for: (a) Resale in the regular course of business without intervening use by the buyer, (b) use as an ingredient or component part of a new article of tangible personal property to be produced for sale, (c) use as a chemical to be used in processing a new article of tangible personal property to be produced for sale, or (d) use as feed, seed, fertilizer, or spray materials in its capacity as a farmer as defined in chapter 82.04 RCW. This certificate shall be considered a part of each order that I may give to you on or after the effective date of this certificate, unless otherwise specified, and is valid until revoked by me in writing. This certificate is given with full knowledge that the buyer is solely responsible for purchasing within the categories specified on the certificate, and that misuse of the resale privilege claimed on the certificate is subject to the legally prescribed penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.~~

Name of Seller..... Effective Date.....  
Name of Buyer.....  
Address.....  
UBI/ Tax Registration #.....  
Type of Business.....  
Items or item categories purchased at wholesale.....  
.....  
Authorized agent for buyer (printed).....  
Authorized Signature.....  
Title.....))

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

Taxpayer Services  
Department of Revenue  
(~~Taxpayer Services~~)  
P.O. Box 47478  
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale (~~as~~

~~does the suggested form provided in this rule;))~~ the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a

paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this (~~(rule)~~) section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this (~~(rule)~~) section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this (~~(rule)~~) section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with

the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this (~~(rule)~~) section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC

must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the ~~((Seattle))~~ Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the ~~((Spokane))~~ Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the ~~((Spokane))~~ Kennewick rate, and code this liability to the location code for ~~((Spokane-3210))~~ Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the ~~((Seattle))~~ Spokane rate, and code this deduction amount to the location code for ~~((Seattle-1726))~~ Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate

to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this ~~((rule))~~ section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued,

and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

## WSR 08-16-090

### EXPEDITED RULES

### DEPARTMENT OF AGRICULTURE

[Filed August 4, 2008, 2:01 p.m.]

Title of Rule and Other Identifying Information: WAC 16-124-011 Dairy technician license, the department is proposing to repeal this section as it duplicates what is already provided for in statute under RCW 15.36.081 which states in part, "...All dairy technicians' licenses shall expire on December 31 of odd-numbered years."

### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Teresa Norman, Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY October 6, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to use the expedited rule-making process to repeal the section of rule for dairy technician license.

Reasons Supporting Proposal: The department, under its rule review process, has reviewed this rule and determined that RCW 15.36.081 contains provisions for the dairy technician license including when the license expires. WAC 16-124-011 contains only a provision for when a dairy technician license expires. Therefore, this section of rule is no longer needed.

Statutory Authority for Adoption: Chapters 15.36 and 34.05 RCW.

Statute Being Implemented: Chapter 15.36 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Claudia Coles, Program



Manager, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1905.

August 4, 2008  
Jerry Buendel  
Assistant Director

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-124-011 Dairy technician license.

**WSR 08-16-101**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Management Services Administration)

[Filed August 5, 2008, 9:35 a.m.]

Title of Rule and Other Identifying Information: The department is amending WAC 388-02-0025 Where is the office of administrative hearings located?, to correct two outdated addresses for the office of administrative hearings.

### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850 or deliver to Blake Office Park East, 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY 5:00 p.m. on October 6, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-02-0025(2) to update the address for the Seattle office of administrative hearings and to remove the outdated reference to the Everett office. The two offices have been consolidated and moved to a new location.

Changing address information without changing the effect of the rule is appropriate for expedited rule making under RCW 34.05.353 (1)(c).

Reasons Supporting Proposal: Updating the rule will help clients locate the office of administrative hearings offices and help clients submit timely requests for fair hearings.

Statutory Authority for Adoption: RCW 34.05.353.

Statute Being Implemented: Chapter 34.05 RCW, Parts IV and V.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brian Lindgren, P.O. Box 45803, Olympia, WA 98504-5803, (360) 664-6093.

July 23, 2008

Katherine Iyall Vasquez, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-22-076, filed 10/31/05, effective 12/1/05)

**WAC 388-02-0025 Where is the office of administrative hearings located?** (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings  
2420 Bristol Court SW, 1st Floor  
P.O. Box 42488  
Olympia WA 98504-2488  
(360) 664-8717  
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

#### **Olympia**

Office of Administrative Hearings  
2420 Bristol Court SW, 3rd Floor  
P.O. Box 42489  
Olympia, WA 98504-2489  
(360) 753-2531  
1-800-583-8271  
fax: (360) 586-6563

#### **Seattle**

Office of Administrative Hearings  
~~((1904 3rd Ave., Suite 722  
Seattle, WA 98101-1100  
(206) 464-6322  
1-800-583-8270  
fax: (206) 587-5136))~~

One Union Square  
600 University Street, Suite 1500

Mailstop: TS-07  
Seattle, WA 98101-1129  
(206) 389-3400  
1-800-845-8830  
fax: (206) 587-5135

#### ~~((**Everett**~~

~~Office of Administrative Hearings  
2722 Colby, Suite 610  
Everett, WA 98201-3571  
(425) 339-1921  
1-800-583-8261  
fax: (425) 339-3907))~~

**Vancouver**

Office of Administrative Hearings  
5300 MacArthur Blvd., Suite 100  
Vancouver, WA 98661  
(360) 690-7189  
1-800-243-3451  
fax: (360) 696-6255

**Spokane**

Office of Administrative Hearings  
Old City Hall Building, 5th Floor  
221 N. Wall Street, Suite 540  
Spokane, WA 99201  
(509) 456-3975  
1-800-366-0955  
fax: (509) 456-3997

**Yakima**

Office of Administrative Hearings  
32 N 3rd Street, Suite 320  
Yakima, WA 98901-2730  
(509) 575-2147  
1-800-843-3491  
fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: [www.oah.wa.gov](http://www.oah.wa.gov)

**WSR 08-16-111  
EXPEDITED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed August 5, 2008, 11:01 a.m.]

Title of Rule and Other Identifying Information: Accident reporting and investigation; chapter 296-24 WAC, General safety and health standards; chapter 296-27 WAC, Recordkeeping and reporting; chapter 296-37 WAC, Standards for commercial diving operations; chapter 296-305 WAC, Safety standards for fire fighters; and chapter 296-800 WAC, Safety and health core rules.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Josh Swanson, Department of Labor and Industries, P.O. Box 4001, Olympia, WA 98504-4001, AND RECEIVED BY October 10, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to change the reporting requirements con-

tained in the above listed chapters to match the reporting requirements in other safety standards administered and enforced by the department. These sections were inadvertently left out of the previous rule filing that changed these requirements, see WSR 08-05-012. Additionally, the definition of the term "hospitalization" is being clarified to reduce confusion and bring our rules into line with OSHA's interpretation of the word.

Reasons Supporting Proposal: All employees will be protected equally and safety standards will be consistent throughout all industries.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

August 5, 2008  
Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 04-07-161, filed 3/23/04, effective 6/1/04)

**WAC 296-24-012 Definitions applicable to all sections of this chapter.**

Note: Meaning of words. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

(1) "Approved" means approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), the provisions of WAC 296-800-360 shall apply.

(2) "Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

(3) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective action to eliminate them.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department of labor and industries, or his/her designated representative.

(6) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more

employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(7) "First aid" means, for purposes of this section, the extent of treatment that could be expected to be given by a person trained in basic first aid, using supplies from a first-aid kit. Tests, such as X rays, shall not be confused with treatment.

(8) "Hazard" means that condition, potential or inherent, which can cause injury, death, or occupational disease.

(9) "Hospitalization" means to be ~~((sent to; to go to; or be))~~ admitted to a hospital or an equivalent medical facility ~~((and receive medical treatment beyond that which would be considered as first aid treatment, regardless of the length of stay in the hospital or medical facility))~~ on an emergent inpatient basis requiring an overnight stay.

(10) "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.

(11) "Safety factor" means the ratio of the ultimate breaking strength of a member or piece of material or equipment to the actual working stress or safe load when in use.

(12) "Safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(13) "Shall" means mandatory.

(14) "Should" means recommended.

(15) "Standard safeguard" means a device designed and constructed with the object of removing the hazard of accident incidental to the machine, appliance, tool, building, or equipment to which it is attached.

Standard safeguards shall be constructed of either metal or wood or other suitable material or a combination of these. The final determination of the sufficiency of any safeguard rests with the director of the department of labor and industries.

(16) "Suitable" means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(17) "Working day" means a calendar day, except Saturdays, Sundays, and legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day.

(18) "Worker," "personnel," "person," "employee," and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, mean an employee of an employer who is employed in the business of his/her employer whether by way of manual labor or other-

wise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his/her personal labor for an employer whether by manual labor or otherwise.

(19) "Work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(20) Abbreviations used in this chapter:

(a) "ANSI" means American National Standards Institute.

(b) "API" means American Petroleum Institute.

(c) "ASA" means American Standards Association.

(d) "ASAE" means American Society of Agricultural Engineers.

(e) "ASHRE" means American Society of Heating and Refrigeration Engineers.

(f) "ASME" means American Society for Mechanical Engineers.

(g) "ASTM" means American Society for Testing and Materials.

(h) "AWS" means American Welding Society.

(i) "BTU" means British thermal unit.

(j) "BTUH" means British thermal unit per hour.

(k) "CFM" means cubic feet per minute.

(l) "CFR" means Code of Federal Regulations.

(m) "CGA" means Compressed Gas Association.

(n) "CIE" means Commission Internationale de l' Eclairage.

(o) "DOT" means department of transportation.

(p) "FRP" means fiberglass reinforced plastic.

(q) "GPM" means gallons per minute.

(r) "ICC" means Interstate Commerce Commission.

(s) "ID" means inside diameter.

(t) "LPG" means liquefied petroleum gas.

(u) "MCA" means Manufacturing Chemist Association. (New name: Chemical Manufacturers Association.)

(v) "NBFU" means National Board of Fire Underwriters.

(w) "NEMA" means National Electrical Manufacturing Association.

(x) "NFPA" means National Fire Protection Association.

(y) "NTP" means normal temperature and pressure.

(z) "OD" means outside diameter.

(aa) "PSI" means pounds per square inch.

(bb) "PSIA" means pounds per square inch atmospheric.

(cc) "PSIG" means pounds per square inch gauge.

(dd) "RMA" means Rubber Manufacturers Association.

(ee) "SAE" means Society of Automotive Engineers.

(ff) "TFI" means The Fertilizer Institute.

(gg) "TSC" means Trailer Standard Code.

(hh) "UL" means Underwriters' Laboratories, Inc.

(ii) "USASI" means United States of America Standards Institute.

(jj) "USC" means United States Code.

(kk) "USCG" means United States Coast Guard.

(ll) "WAC" means Washington Administrative Code.

(mm) "WISHA" means Washington Industrial Safety and Health Act of 1973.

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

**WAC 296-27-00105 Partial exemption for private employers in certain industries.** (1) Basic requirement.

(a) If your private business establishment is classified in a specific low hazard retail, service, finance, insurance or real estate industry listed in Table 1 you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. (Public employers are not included in this exemption, except as indicated in (b) of this subsection.) However, all employers must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of any employee (see WAC 296-800-32005).

(b) If you are a public employer in SIC 821 (elementary and secondary schools) and 823 (libraries), you do not need to keep injury and illness records unless WISHA, OSHA or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. However, all employers must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of ~~((two or more))~~ any employee(s) (see WAC 296-800-32005).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep injury and illness records for all of such establishments unless your company is partially exempted because of size under WAC 296-27-00103.

(2) Implementation.

(a) **Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)?** Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.

(b) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(c) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification manual, *Executive Office of the President, Office of Management and Budget*. You may contact your local L&I office for help in determining your SIC or visit Department of Revenue's web site, [http://dor.wa.gov/reports/Qbrsearch/sic\\_list.htm](http://dor.wa.gov/reports/Qbrsearch/sic_list.htm).

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

**WAC 296-27-00109 Nonmandatory appendix to this section—Partially exempt industries.** Employers are not

required to keep OSHA injury and illness records for any establishment classified in the following Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by WISHA, OSHA, or the Bureau of Labor Statistics (BLS). All employers, including those partially exempted by reason of company size or industry classification, must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of ~~((two or more))~~ any employee(s) (see WAC 296-800-32005).

See Table "1" at the end of this document.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

**WAC 296-27-031 Reporting fatality, injury, and illness information.** (1) Basic requirement. You must report fatalities, injuries and illnesses information as required by WAC 296-800-32005.

(2) Implementation.

(a) **If the local L&I office is closed, how do I report the incident?** If the local office is closed, you must report a fatality or ~~((multiple))~~ in-patient hospitalization incident by calling either the department at 1-800-4BE-SAFE (1-800-423-7233) or by contacting the Occupational Safety and Health Administration (OSHA) by calling its central number at 1-800-321-6742.

(b) **What information do I need to give about the incident?** You must give the following information for each fatality or ~~((multiple))~~ in-patient hospitalization incident:

- Name of the work place;
- Location of the incident;
- Time and date of the incident;
- Number of fatalities or hospitalized employees;
- Names of injured employees;
- Contact person and phone number; and
- Brief description of the incident.

AMENDATORY SECTION (Amending Order 78-18, filed 10/2/78)

**WAC 296-37-525 Medical requirements.** (1) General.

(a) The employer shall determine that dive team members who are, or are likely to be, exposed to hyperbaric conditions are medically fit to perform assigned tasks in a safe and healthful manner.

(b) The employer shall provide each dive team member who is, or is likely to be, exposed to hyperbaric conditions with all medical examinations required by this standard.

(c) All medical examinations required by this standard shall be performed by, or under the direction of, a physician at no cost to the employee.

(2) Frequency of medical examinations. Medical examinations shall be provided:

(a) Prior to initial hyperbaric exposure with the employer, unless an equivalent medical examination has been given within the preceding 12 months and the employer has obtained the results of the examination and an opinion from the examining physician of the employee's medical fitness to dive or to be otherwise exposed to hyperbaric conditions;

(b) At one year intervals from the date of initial examination or last equivalent examination; and

(c) After an injury or illness requiring in-patient hospitalization (~~(of more than twenty-four hours)~~).

(3) Information provided to examining physician. The employer shall provide the following information to the examining physician:

(a) A copy of the medical requirements of this standard; and

(b) A summary of the nature and extent of hyperbaric conditions to which the dive team member will be exposed, including diving modes and types of work to be assigned.

(4) Content of medical examinations.

(a) Medical examinations conducted initially and annually shall consist of the following:

- (i) Medical history;
- (ii) Diving-related work history;
- (iii) Basic physical examination;
- (iv) The tests required by Table I; and
- (v) Any additional tests the physician considers necessary.

(b) Medical examinations conducted after an injury or illness requiring in-patient hospitalization (~~(of more than 24 hours)~~) shall be appropriate to the nature and extent of the injury or illness as determined by the examining physician.

**TABLE I**  
TESTS FOR DIVING MEDICAL EXAMINATION

Test	Initial Examination	Annual Reexamination
Chest X ray . . . . .	x	
Visual acuity . . . . .	x	x
Color blindness . . . . .	x	
EKG: Standard 12L <sup>1</sup> . . . . .		
Hearing test . . . . .	x	x
Hematocrit or . . . . . hemoglobin.	x	x
Sickle cell index . . . . .	x	
White blood count . . . . .	x	x
Urinalysis . . . . .	x	x

<sup>1</sup>To be given to the employee once, at age 35 or over.

(5) Physician's written report.

(a) After any medical examination required by this standard, the employer shall obtain a written report prepared by the examining physician containing:

- (i) The results of the medical examination; and
- (ii) The examining physician's opinion of the employee's fitness to be exposed to hyperbaric conditions, including any recommended restrictions or limitations to such exposure (see WAC 296-37-585).

(b) The employer shall provide the employee with a copy of the physician's written report.

(6) Determination of employee fitness.

(a) The employer shall determine the extent and nature of the dive team member's fitness to engage in diving or be

otherwise exposed to hyperbaric conditions consistent with the recommendations in the examining physician's report.

(b) If the examining physician has recommended a restriction or limitation on the dive team member's exposure to hyperbaric conditions, and the affected employee does not concur, a second physician selected by the employee shall render a medical opinion on the nature and extent of the restriction or limitation, if any.

(c) If the recommendation of the second opinion differs from that of the examining (first) physician, and if the employer and employee are unable to agree on the nature and extent of the restriction or limitation, an opinion from a third physician selected by the first two physicians shall be obtained. The employer's determination of the dive team member's fitness shall be consistent with the medical opinion of the third physician, unless the employer and employee reach an agreement which is otherwise consistent with the recommendation or opinion of at least two of the physicians involved.

(d) Nothing in this procedure shall be construed to prohibit either a dive team member from accepting, or an employer from offering, an assignment which is otherwise consistent with at least one medical opinion while a final determination on the employee's fitness is pending.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

**WAC 296-305-01503 Accident investigation.** (1)

After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated by the employer. The fire department shall establish a written procedure and a program for investigating, and evaluating the facts, relating to the cause of accidents. The findings of the investigation shall be documented by the employer for reference at any following formal investigations.

(2) Within eight hours after the fatality or probable fatality of any fire fighter or employee from a work-related incident or the inpatient hospitalization of (~~two or more~~) any employee(~~s~~) as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/~~(multiple)~~ hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(3) Equipment involved in an accident resulting in an immediate or probable fatality, shall not be moved, until a representative of the consultation and compliance services division investigates the accident and releases such equipment, except where removal is essential to prevent further accident. When necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(4) Upon arrival of the department's investigator, the employer shall assign to assist the investigator such personnel as are deemed necessary by the department to conduct the investigation.

(5) The fire department shall preserve all records, photographic materials, audio, video, recordings, or other documentation concerning an accident.

Reference: WAC 296-24-020 (2), (3).

**AMENDATORY SECTION** (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

**WAC 296-800-320 Summary.** Your responsibility:

To report and conduct an investigation of certain types of accidents.

**You must:**

Report the death, or probable death, of any employee, or the in-patient hospitalization of any employee within 8 hours

*WAC 296-800-32005*

Make sure that any equipment involved in an accident is not moved.

*WAC 296-800-32010*

Assign people to assist the department of labor and industries

*WAC 296-800-32015*

Conduct a preliminary investigation for all serious injuries

*WAC 296-800-32020*

Document the investigation findings

*WAC 296-800-32025*

*(Note: Call the nearest office of the department of labor and industries at 1-800-4BE-SAFE or call Occupational Safety and Health Administration (OSHA) at 1-800-321-6742, to report the death, probable death of any employee or the in-patient hospitalization of 2 or more employees within 8 hours, after handling medical emergencies.)*

**AMENDATORY SECTION** (Amending WSR 03-18-090, filed 9/2/03, effective 11/1/03)

**WAC 296-800-370 Definitions.**

**Abatement Action Plans**

Refers to your written plans for correcting a WISHA violation.

**Abatement date**

The date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

**Acceptable**

As used in **Electrical**, **WAC 296-800-280** means an installation or equipment is acceptable to the director of labor and industries, and approved:

- If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or

- With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another federal agency, or by a state, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this section;

**OR**

- With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the director and his/her authorized representatives. Refer to federal regulation 29 CFR 1910.7 for definition of nationally recognized testing laboratory.

**Accepted**

As used in **Electrical**, **WAC 296-800-280** means an installation is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

**Access**

As used in material safety data sheets (MSDSs) as Exposure Records, **WAC 296-800-180** means the right and opportunity to examine and copy exposure records.

**Affected employees**

As used in WISHA appeals, penalties and other procedural rules, **WAC 296-800-350** means employees exposed to hazards identified as violations in a citation.

**Analysis using exposure or medical records**

- An analysis using exposure records or medical records can be any collection of data or a statistical study. It can be based on either:

- Partial or complete information from individual employee exposure or medical records or
- Information collected from health insurance claim records

- The analysis is not final until it has been:

- Reported to the employer or
- Completed by the person responsible for the analysis

**ANSI**

This is an acronym for the American National Standards Institute.

**Approved means:**

- Approved by the director of the department of labor and industries or their authorized representative, or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).

- As used in **Electrical**, **WAC 296-800-280** means acceptable to the authority enforcing this section. The authority enforcing this section is the director of labor and industries. The definition of acceptable indicates what is acceptable to the director and therefore approved.

**Assistant director**

The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

**ASTM**

This is an acronym for American Society for Testing and Materials.

**Attachment plug or plug**

As used in the basic electrical rules, **WAC 296-800-280** means the attachment at the end of a flexible cord or cable that is part of a piece of electrical equipment. When it is inserted into an outlet or receptacle, it connects the conduc-

tors supplying electrical power from the outlet to the flexible cable.

**Bare conductor**

A conductor that does not have any covering or insulation.

**Bathroom**

A room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.

**Biological agents**

Organisms or their by-products.

**Board**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means the board of industrial insurance appeals.

**Ceiling**

An exposure limit that must not be exceeded during any part of the employee's workday. The ceiling must be determined over the shortest time period feasible and should not exceed fifteen minutes.

**Certification**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means refers to an employer's written statement describing when and how a citation violation was corrected.

**CFR**

This is an acronym for Code of Federal Regulations.

**Chemical**

Any element, chemical compound, or mixture of elements and/or compounds.

**Chemical agents (airborne or contact)**

A chemical agent is any of the following:

• Airborne chemical agent which is any of the following:  
– Dust - solid particles suspended in air, that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.

• Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

– Fume - solid particles suspended in air, that are created by condensation from the gaseous state.

– Gas - a normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

– Mist - liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

**OR**

• Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

– Vapor - the gaseous form of a substance that is normally in the solid or liquid state.

- Contact chemical agent which is any of the following:

– Corrosive - a substance that, upon contact, causes destruction of living tissue by chemical action, including

acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

– Irritant - a substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

– Toxicant - a substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

**Chemical manufacturer**

An employer with a workplace where one or more chemicals are produced for use or distribution.

**Chemical name**

The scientific designation of a chemical in accordance with one of the following:

- The nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC)
- The Chemical Abstracts Service (CAS) rules of nomenclature

• A name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

**Circuit breaker**

• Is a device used to manually open or close a circuit. This device will also open the circuit automatically and without damage to the breaker when a predetermined overcurrent is applied. (600 volts nominal or less)

• Is a switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit. (Over 600 volts nominal)

**Citation**

Refers to the citation and notice issued to an employer for any violation of WISHA safety and health rules. A citation and notice may be referred to as a citation and notice of assessment but is more commonly referred to as a citation.

**Combustible liquid**

A combustible liquid has a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). Mixtures with at least 99% of their components having flashpoints of 200°F (93.3°C) or higher are not considered combustible liquids.

**Commercial account**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an arrangement in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.

**Common name**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any designation or identification such as:

- Code name
- Code number
- Trade name
- Brand name
- Generic name used to identify a chemical other than by its chemical name.

**Compressed gas**

A gas or mixture of gases that, when in a container, has an absolute pressure exceeding:

- 40 psi at 70°F (21.1°C)

**OR**

- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

Compressed gas can also mean a liquid with a vapor pressure that exceeds 40 psi at 100°F (37.8°C)

**Conductor**

A wire that transfers electric power.

**Container**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any container, except for pipes or piping systems, that contains a hazardous chemical. It can be any of the following:

- Bag
- Barrel
- Bottle
- Box
- Can
- Cylinder
- Drum
- Reaction vessel
- Storage tank

**Correction date**

The date by which a violation must be corrected. Final orders or extensions that give additional time to make corrections establish correction dates. A correction date established by an order of the board of industrial insurance appeals remains in effect during any court appeal unless the court suspends the date.

**Corrective notice**

Refers to a notice changing a citation and is issued by the department after a citation has been appealed.

**Corrosive**

A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

**Covered conductor**

A conductor that is covered by something else besides electrical insulation.

**Damp location**

As used in basic electrical rules, WAC 296-800-280 means partially protected areas that are exposed to moderate moisture. Outdoor examples include roofed open porches and marquees. Interior examples include basements and barns.

**Department**

Those portions of the department of labor and industries responsible for enforcing the Washington Industrial Safety Act (WISHA).

**Designated representative**

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written authorization.
- The legal representative of a deceased or legally incapacitated employee.

**Director**

The director means the director of the department of labor and industries or their designee.

**Distributor**

A business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers.

**Documentation**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means material that you submit to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and/or labor.

**Dry location**

As used in basic electrical rules, WAC 296-800-280 means areas not normally subjected to damp or wet conditions. Dry locations may become temporarily damp or wet, such as when constructing a building.

**Dust**

Solid particles suspended in air that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.
- Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

**Emergency washing facilities**

Emergency washing facilities are emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

**Electrical outlets**

Places on an electric circuit where power is supplied to equipment through receptacles, sockets, and outlets for attachment plugs.

**Employee**

Based on chapter 49.17 RCW, the term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

**Employee exposure record**

As used in material safety data sheets (MSDSs) as exposure records, WAC 296-800-180 means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which



assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

- Material safety data sheets indicating that the material may pose a hazard to human health;

**OR**

- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

#### **Employer**

Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

#### **Exit**

Provides a way of travel out of the workplace.

#### **Exit route**

A continuous and unobstructed path of exit travel from any point within a workplace to safety outside.

#### **Explosive**

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

#### **Exposed live parts**

Electrical parts that are:

- Not suitably guarded, isolated, or insulated

**AND**

- Capable of being accidentally touched or approached closer than a safe distance.

#### **Exposed wiring methods**

Involve working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

#### **Exposure or exposed**

As used in employer chemical hazard communication, WAC 296-800-170 and material safety data sheets (MSDSs) as exposure records, WAC 296-800-180. An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation
- Ingestion
- Skin contact
- Absorption
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical nonoccupational situations in the way it is:

- Used
- Handled
- Stored
- Generated
- Present

#### **Exposure record**

See definition for employee exposure record.

#### **Extension ladder**

A portable ladder with 2 or more sections and is not self-supporting. The 2 or more sections travel in guides or brackets that let you change the length. The size of a portable ladder is determined by adding together the length of each section.

#### **Failure-to-abate**

Any violation(s) resulting from not complying with an abatement date.

#### **Final order**

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice;
- Corrective notice;
- Decision and order from the board of industrial insurance appeals;
- Denial of petition for review from the board of industrial insurance appeals; or
- Decision from a Washington State superior court, court of appeals, or the state supreme court.

#### **Final order date**

The date a final order is issued.

#### **First aid**

The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Tests, such as X rays, must not be confused with treatment.

#### **Flammable**

A chemical covered by one of the following categories:

- Aerosol flammable means an aerosol that, when tested by the method described in 16 CFR 1500.45 yields either a flame projection more than 18 inches at full valve opening or a flashback (a flame extending back to the valve) at any degree of valve opening;

- Gas, flammable means:

- A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less or

- A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.

- Liquid, flammable means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99% or more of the total volume of the mixture.

- Solid, flammable means a solid, other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates

a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

#### **Flashpoint**

• The minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested by any of the following measurement methods:

– Tagliabue closed tester: (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

– Pensky-Martens closed tester: (See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

– Setaflash closed tester: (See American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78).)

**Note:** Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

#### **Flexible cords and cables**

Typically used to connect electrical equipment to an outlet or receptacle. These cords can have an attachment plug to connect to a power source or can be permanently wired into the power source. Flexible cords, extension cords, cables and electrical cords are all examples of flexible cord.

#### **Floor hole**

An opening in any floor, platform, pavement, or yard that measures at least one inch but less than 12 inches at its smallest dimension and through which materials and tools (but not people) can fall.

Examples of floor holes are:

- Belt holes
- Pipe openings
- Slot openings

#### **Floor opening**

An opening in any floor, platform, pavement, or yard that measures at least 12 inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways
- Stair or ladder openings
- Pits
- Large manholes

The following are NOT considered floor openings:

- Openings occupied by elevators
- Dumbwaiters
- Conveyors
- Machinery
- Containers

#### **Foreseeable emergency**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

#### **Fume**

Solid particles suspended in air that are created by condensation from the gaseous state.

#### **Gas**

A normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

#### **Ground**

As used in Electrical, WAC 296-800-280, a connection between an electrical circuit or equipment and the earth or other conducting body besides the earth. This connection can be intentional or accidental.

#### **Grounded**

A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth.

#### **Grounded conductor**

A system or circuit conductor that is intentionally grounded.

#### **Ground-fault circuit-interrupter**

A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

#### **Grounding conductor**

Is used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

#### **Grounding conductor, equipment**

A conductor used to connect noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

#### **Guarded**

Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of being accidentally touched or approached closer than a safe distance.

#### **Hand-held drench hoses**

Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose that can be used to irrigate and flush the face or other body parts.

#### **Handrail**

A single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

#### **Harmful physical agent**

Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS); or

- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;

**OR**

- Is the subject of a material safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

#### **Hazard**

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

#### **Hazard warning**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 can be a combination of words, pictures, symbols, or combination appearing on a label or other appropriate form of warning which shows the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s).

**Note:** See definition for physical hazard and health hazard to determine which hazards must be covered.

#### **Hazardous chemical**

Any chemical that is a physical or health hazard.

#### **Health hazard**

A chemical, mixture, biological agent, or physical agent that may cause health effects in short- or long-term exposed employees. Based on statistically significant evidence from at least one study conducted using established scientific principles. Health hazards include:

- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)
- Substances that act on the hematopoietic system (blood or blood-forming system)
  - Substances that can damage the lungs, skin, eyes, or mucous membranes
  - Hot or cold conditions.

#### **Hospitalization**

To be ~~((sent to, to go to, or be))~~ admitted to ~~((;))~~ a hospital or an equivalent medical facility ~~((and receive medical treatment beyond first aid treatment, regardless of the length of stay in the hospital or medical facility))~~ on an emergent in-patient basis requiring an overnight stay.

#### **Identity**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any chemical or common name listed on the material safety data sheet (MSDS) for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals
- Chemical label
- MSDSs

#### **Imminent danger violation**

Any violation(s) resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

#### **Importer**

The first business within the Customs Territory of the USA that:

- Receives hazardous chemicals produced in other countries

**AND**

- Supplies them to distributors or employers within the USA

#### **Insulated**

A conductor has been completely covered by a material that is recognized as electrical insulation and is thick enough based on:

- The amount of voltage involved

**AND**

- The type of covering material

#### **Interim waiver**

An order granted by the department allowing an employer to vary from WISHA requirements until the department decides to grant a permanent or temporary waiver.

#### **Irritant**

A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

#### **Ladder**

Consists of 2 side rails joined at regular intervals by crosspieces called steps, rungs, or cleats. These steps are used to climb up or down.

#### **Listed**

Equipment is listed if it:

- Is listed in a publication by a nationally recognized laboratory (such as UL, underwriters laboratory) that inspects the production of that type of equipment,

**AND**

- States the equipment meets nationally recognized standards or has been tested and found safe to use in a specific manner.

#### **Material safety data sheet (MSDS)**

Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous chemical, its hazards, and protective measures as required by material safety data sheet and label preparation, chapter 296-839 WAC.

#### **Medical treatment**

Treatment provided by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even if provided by a physician or registered professional personnel.

#### **Mist**

Liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

**OR**

• Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

**Mixture**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any combination of 2 or more chemicals (if that combination did not result from a chemical reaction).

**Movable equipment**

As used in WAC 296-800-35052, a hand-held or non-hand-held machine or device;

- That is powered or nonpowered;

**AND**

- Can be moved within or between worksites

**Must**

Must means mandatory.

**NEMA**

These initials stand for National Electrical Manufacturing Association.

**NFPA**

This is an acronym for National Fire Protection Association.

**Nose**

The portion of the stair tread that projects over the face of the riser below it.

**Occupational Safety and Health Administration (OSHA)**

Created in 1970 when the U.S. Congress passed the Occupational Safety and Health Act, the Occupational Safety and Health Administration (OSHA) provides safety on the job for workers. OSHA oversees state plans (such as WISHA in Washington) that have elected to administer the safety and health program for their state. OSHA requires WISHA rules to be at least as effective as OSHA rules.

**Office work environment**

An indoor or enclosed occupied space where clerical work, administration, or business is carried out.

In addition, it includes:

• Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.

• Office areas of manufacturing and production facilities, not including process areas.

• Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

**Open riser**

A stair step with an air space between treads has an open riser.

**Organic peroxide**

This is an organic compound containing the bivalent-0-0-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

**Outlet**

See definition for electrical outlets.

**Oxidizer**

A chemical other than a blasting agent or explosive as defined in WAC 296-52-60130 or CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

**Permissible exposure limits (PELs)**

Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable WISHA rules.

**Person**

Based on chapter 49.17 RCW, one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

**Personal eyewash units**

Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

**Personal service room**

Used for activities not directly connected with a business' production or service function such as:

- First aid
- Medical services
- Dressing
- Showering
- Bathrooms
- Washing
- Eating

**Personnel**

See the definition for employees.

**Physical hazard**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means a chemical that has scientifically valid evidence to show it is one of the following:

- Combustible liquid
- Compressed gas
- Explosive
- Flammable
- Organic peroxide
- Oxidizer
- Pyrophoric
- Unstable (reactive)
- Water reactive

**Platform**

Platform means an extended step or landing that breaks a continuous run of stairs.

**Plug**

See definition for attachment plug.

**Potable water**

Water that you can safely drink. It meets specific safety standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141, and 40 CFR 147.2400.

**Predictable and regular basis**

Employee functions such as, but not limited to, inspection, service, repair and maintenance which are performed

- at least once every 2 weeks

**OR**

• 4 man-hours or more during any sequential 4-week period (to calculate man-hours multiply the number of employees by the number of hours during a 4-week period).

**Produce**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any one of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage

**Purchaser**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, an employer who buys one or more hazardous chemicals to use in their workplace.

**Pyrophoric**

A chemical is pyrophoric if it will ignite spontaneously in the air when the temperature is 130°F (54.4°C) or below.

**Qualified person**

A person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of a recognized degree, certificate, or professional standing;

**OR**

- Extensive knowledge, training and experience.

**Railing or standard railing**

A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

**Reassume jurisdiction**

The department has decided to take back its control over a citation and notice being appealed.

**Receptacle or receptacle outlet**

As used in basic electrical rules, WAC 296-800-280 means outlets that accept a plug to supply electric power to equipment through a cord or cable.

**Record**

A record is any item, collection, or grouping of information. Examples include:

- Paper document
- Microfiche
- Microfilm
- X-ray film
- Computer record

**Repeat violation**

A violation is a repeat violation if the employer has been cited one or more times previously for a substantially similar hazard.

**Responsible party**

As used in employer chemical hazard communication, WAC 296-800-170. Someone who can provide appropriate information about the hazardous chemical and emergency procedures.

**Rise**

The vertical distance from the top of a tread to the top of the next higher tread.

**Riser**

The vertical part of the step at the back of a tread that rises to the front of the tread above.

**Rungs**

Rungs are the cross pieces on ladders that are used to climb up and down the ladder.

**Runway**

An elevated walkway above the surrounding floor or ground level. Examples of runways are footwalks along shafting or walkways between buildings.

**Safety factor**

The term safety factor means the ratio of when something will break versus the actual working stress or safe load when it is used.

**Serious violation**

Serious violation must be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

**Short-term exposure limit (STEL)**

An exposure limit, averaged over a short time period (usually measured for 15 minutes) that must not be exceeded during any part of an employee's workday.

**Should**

Should means recommended.

**Single ladder**

A type of portable ladder with one section. It is distinguished by all of the following:

- It has one section
- It cannot support itself
- Its length cannot be adjusted

**Smoking**

A person is smoking if they are:

- Lighting up
- Inhaling
- Exhaling
- Carrying a pipe, cigar or cigarette of any kind that is burning

**Specific chemical identity**

This term applies to chemical substances. It can mean the:

- Chemical name
- Chemical Abstracts Service (CAS) registry number
- Any other information that reveals the precise chemical designation of the substance.

**Stair railing**

A vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail

**Stairs or stairway**

A series of steps and landings:

- leading from one level or floor to another,
- leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment
- Used more or less continuously or routinely by employees, or only occasionally by specific individuals.
- With three or more risers

**Standard safeguard**

Safety devices that prevent hazards by their attachment to:

- Machinery
- Appliances
- Tools
- Buildings
- Equipment

These safeguards must be constructed of:

- Metal
- Wood
- Other suitable materials

The department makes the final determination about whether a safeguard is sufficient for its use.

**Step ladder**

A portable ladder with:

- Flat steps
- A hinge at the top allowing the ladder to fold out and support itself
- Its length that cannot be adjusted.

**Time weighted average (TWA<sub>8</sub>)**

An exposure limit, averaged over 8 hours, that must not be exceeded during an employee's work shift.

**Toeboard**

A barrier at floor level along exposed edges of a floor opening, wall opening, platform, runway, or ramp, to prevent falls of materials.

**Toxic chemical**

As used in first aid, WAC 296-800-150, is a chemical that produces serious injury or illness when absorbed through any body surface.

**Toxic substance**

Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS)
- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer
- The subject of a material safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

**Toxicant**

A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

**Trade secret**

Any confidential:

- Formula
- Pattern
- Process
- Device
- Information
- Collection of information

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-62-053 for requirements dealing with trade secrets.

**Tread**

As used in stairs and stair railings, WAC 296-800-250 means the horizontal part of the stair step.

**Tread run**

As used in stairs and stair railings, WAC 296-800-250 means the distance from the front of one stair tread to the front of an adjacent tread.

**Tread width**

The distance from front to rear of the same tread including the nose, if used.

**UL (Underwriters' Laboratories, Inc.)**

You will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

**Unstable (reactive)**

As used in employer chemical hazard communication, WAC 296-800-170. An unstable or reactive chemical is one that in its pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

**Use**

As used in employer chemical hazard communication, WAC 296-800-170, means to:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

**Vapor**

The gaseous form of a substance that is normally in the solid or liquid state.

**Voltage of a circuit**

The greatest effective potential difference between any two conductors or between a conductor and ground.

**Voltage to ground**

The voltage between a conductor and the point or conductor of the grounded circuit. For undergrounded circuits, it is the greatest voltage between the conductor and any other conductor of the circuit.

**Voltage, nominal**

Nominal voltage is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

**WAC**

This is an acronym for **Washington Administrative Code**, which are rules developed to address state law.

**Water-reactive**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, a water-reactive chemical reacts with water to release a gas that is either flammable or presents a health hazard.

**Watertight**

Constructed so that moisture will not enter the enclosure or container.

**Weatherproof**

Constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, rain-tight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

**Wet location**

As used in basic electrical rules, WAC 296-800-280 means:

- Underground installations or in concrete slabs or masonry that are in direct contact with the earth
- Locations that can be saturated by water or other liquids
- Unprotected locations exposed to the weather (like vehicle washing areas)

**WISHA**

This is an acronym for the Washington Industrial Safety and Health Act.

**Work area**

As used in employer chemical hazard communication, WAC 296-800-170, a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

**Working days**

Means a calendar day, except Saturdays, Sundays, and legal holidays. Legal holidays include:

- New Year's Day - January 1
- Martin Luther King, Jr. Day
- Presidents' Day
- Memorial Day
- Independence Day - July 4
- Labor Day
- Veterans' Day - November 11
- Thanksgiving Day
- The day after Thanksgiving Day; and
- Christmas Day - December 25

The number of working days must be calculated by not counting the first working day and counting the last working day.

**Worker**

See the definition for employee.

**Workplace**

• The term workplace means:

- Any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

- As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an establishment, job site, or project, at one geographical location containing one or more work areas.

**You**

See definition of employer.

**Your representative**

Your representative is the person selected to act in your behalf.

**WSR 08-16-124****EXPEDITED RULES****STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES**

[Filed August 5, 2008, 4:30 p.m.]

Title of Rule and Other Identifying Information: Chapter 131-49 WAC, Regulations for the administration of the displaced homemaker program.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO DelRae Oderman, State Board for Community and Technical Colleges, P.O. Box 42495, Olympia, WA 98504-2495, AND RECEIVED BY October 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Administration of this program has been moved from the higher education coordination [coordinating] board (HECB) to the state board for community and technical colleges and the WAC moved to chapter 131-49 WAC. Technical changes have been made to update WAC citations, references to the HECB, and references to 1999-2001 contracts.

Statutory Authority for Adoption: Chapter 28B.04 RCW.

Statute Being Implemented: Chapter 28B.04 RCW.

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

Name of Proponent: State board for community and technical colleges, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Erin Brown, 1300 Quince Street S.E., Olympia, WA 98504-2495, (360) 704-4304.

August 6 [5], 2008

DelRae Oderman

Executive Assistant

Agency Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-010 Purpose.** The Displaced Homemaker Act, chapter 28B.04 RCW establishes guidelines under which the ((higher education coordinating board)) state board for community and technical colleges shall contract to establish both multipurpose service centers and programs of service to provide necessary training opportunities, counseling and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life. This chapter is promulgated by the board to establish necessary regulations for the operation of the displaced homemaker program.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-040 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Displaced Homemaker Act, chapter 28B.04 RCW, as amended.

(2) "Advisory committee" means the advisory committee established pursuant to WAC ((250-44-030)) 131-49-030.

(3) "Appropriate job opportunities" means opportunities to be gainfully employed, as defined in subsection (9) of this section, in jobs which build upon all relevant skills and potential skills of the individual displaced homemaker, including opportunities in jobs which in the past may not generally have been considered traditional for women.

(4) "Center" means a multipurpose service center as defined in subsection (10) of this section.

(5) "Board" means the ~~((higher education coordinating board))~~ state board for community and technical colleges.

(6) "Displaced homemaker" means an individual who:

(a) Has worked in the home for ten or more years providing unsalaried household services for family members on a full-time basis; and

(b) Is not gainfully employed;

(c) Needs assistance in securing employment; and

(d) Meets one of the following criteria;

(i) Has been dependent on the income of another family member but is no longer supported by that income; or

(ii) Has been dependent on federal assistance but is no longer eligible for that assistance; or

(iii) Is supported as the parent of minor children by public assistance or spousal support, but whose youngest child is within two years of reaching majority.

(7) "Executive director" means the executive director of the board.

(8) "Executive officer" of the sponsoring organization means the chief executive or senior officer of the organization.

(9) "Gainfully employed" means employed for salary or wages on a continuing basis and earning at least an amount equal to the standard of need established under RCW 74.04.770.

(10) "Multipurpose service center" means a center contracted for under the act, which either provides directly, or provides information about and referral to, each type of program of service as defined in subsection (14) of this section.

(11) "Objective" means a purpose of a program of service which can be quantified and for which objective measurements of performance can be established.

(12) "Displaced homemaker program" means the program of contracts for multipurpose service centers and programs of service for displaced homemakers authorized by the act.

(13) "Program" means a program of service as defined in subsection (14) of this section.

(14) "Program of service" means one of the specific services listed in subdivisions (a) through (g) of this subsection, and meeting the criteria set forth in the subdivision.

(a) Job counseling services, which shall:

(i) Be specifically designed for displaced homemakers;

(ii) Counsel displaced homemakers with respect to appropriate job opportunities (as defined in subsection (3) of this section); and

(iii) Take into account and build upon the skills and experience of a homemaker and emphasize job readiness as well as skill development.

(b) Job training and job placement services, which shall:

(i) Emphasize short-term training programs and programs which expand upon homemaking skills and volunteer experience and which prepare the displaced homemaker to be gainfully employed as defined in subsection (9) of this section;

(ii) Develop, through cooperation with state and local government agencies and private employers, model training and placement programs for jobs in the public and private sectors;

(iii) Assist displaced homemakers in gaining admission to existing public and private job training programs and opportunities, including vocational education and apprenticeship training programs; and

(iv) Assist in identifying community needs and creating new jobs in the public and private sectors.

(c) Health counseling services, including referral to existing health programs, which shall:

(i) Include general principles of preventative health care;

(ii) Include health care consumer education, particularly in the selection of physicians and health care services, including, but not limited to, health maintenance organizations and health insurance;

(iii) Include family health care and nutrition;

(iv) Include alcohol and drug abuse; and

(v) Include other related health care matters as appropriate.

(d) Financial management services, which shall:

(i) Provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans and other related financial matters; and

(ii) Include referral, wherever feasible and appropriate, to public legal assistance programs staffed by attorneys.

(e) Educational services, which shall:

(i) Include outreach and information about courses offering credit through secondary or postsecondary education programs, and other reentry programs, including bilingual programming where appropriate; and

(ii) Include information about such other programs determined by the board to be of interest and benefit to displaced homemakers, and for which appropriate informational materials have been provided by the board.

(f) Legal counseling and referral services, which shall:

(i) Be limited to matters directly related to problems of displaced homemakers;

(ii) Be supplemental to financial management services as defined in subdivision (d) of this subsection; and

(iii) Emphasize referral, wherever feasible and appropriate, to public legal assistance programs staffed by attorneys.

(g) General outreach and information services with respect to federal and state employment, education, health, public assistance, and unemployment assistance programs which the board may determine to be of interest and benefit



to displaced homemakers, and for which the board distributes appropriate informational materials.

(15) "Reaching majority" means reaching age eighteen.

(16) "Sponsoring organization" means a public institution, agency or governmental entity, or a chartered private nonprofit institution or organization which has legal authority to submit an application, enter into a contract, and provide the programs of service covered by the application, and which agrees to provide supervision and financial management to ensure compliance with the terms and conditions of the contract.

(17) "Training for service providers" means activities which provide training for persons serving the needs of displaced homemakers.

(18) "Statewide outreach and information services" means activities designed to make general outreach and information services for displaced homemakers available throughout Washington including but not limited to areas directly served by multipurpose service centers or other programs of service under the displaced homemaker program.

(19) "Subsistence" means support provided to, or paid to recipients for support services including all living expenses, child care, and transportation.

(20) "Performance indicators" means expected levels of services and outcomes as established by the executive director and made available in the application guidelines.

(21) "Initial contract" means a contract awarded based on a competitive process and the evaluation of an initial application.

(22) "Renewal contract" means a contract awarded to a current sponsoring organization for the ensuing biennium, based on the evaluation of a renewal application.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-060 Eligibility to apply for contracts.**

Either an initial or renewal application for a contract to provide either a multipurpose service center or one or more programs of service for displaced homemakers or training for service providers may be submitted by a sponsoring organization, as defined in WAC ((250-44-040)) 131-49-040(16).

(1) The board shall require appropriate documentation of the nonprofit status of an applicant that is nonpublic.

(2) Organizations that apply as a consortium shall submit a single application. The application shall be submitted by the sponsoring organization that will serve as fiscal agent for the consortium.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-070 Calendar and closing dates for applications and awards.**

(1) Applications for both initial and renewal contracts to provide services to displaced homemakers shall be submitted by eligible organizations pursuant to WAC ((250-44-040)) 131-49-040(16) by the date specified in the contract application guidelines.

(2) The executive director of the board shall approve awards of contracts, provided qualifying applications were

received by the closing dates specified in the application guidelines.

(3) In the event that available funds for contracts under the act are not fully utilized after approval of contracts, the executive director shall either establish a new calendar for further consideration of applications and award of contracts, or award supplemental funds to existing centers and programs by amendment of contracts in effect, or award supplemental funds for targeted displaced homemaker program initiatives.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-100 Required assurances.** No contract shall be awarded unless the sponsoring organization includes in its application the following assurances:

(1) No person in this state, on the grounds of sex, age, race, color, religion, national origin, or the presence of any sensory, mental, or physical handicap, shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under the act;

(2) The sponsoring organization shall actively seek to employ for all staff positions supported by funds provided under the act, and for all staff positions supported by matching funds under any contract, including supervisory, technical and administrative positions, persons who qualify as displaced homemakers;

(3) Services provided to displaced homemakers under the contract shall be provided without payment of any fees for the services: Provided, That the executive director may approve exceptions to this requirement upon determining that such exceptions would be in the best interest of displaced homemaker program objectives;

(4) First priority for all services provided under the contract shall be given to persons who qualify in all regards as displaced homemakers. Other persons in need of the services due to similar circumstances may be assisted if provision of such assistance shall not in any way interfere with the provision of services to displaced homemakers as defined in the act. The sponsoring organization shall include in its reports separate and distinct accountability for services to displaced homemakers and to other persons in need of the services;

(5) The sponsoring organization agrees to comply in full with the accounting and reporting requirements set forth in WAC ((250-44-190)) 131-49-190 and such other accounting and reporting requirements as may be established by the executive director.

(6) The sponsoring organization agrees to participate in evaluation procedures, including the use of all specified uniform client classification forms for persons to whom services are provided, and specified uniform evaluation questionnaires;

(7) The sponsoring organization will actively seek to coordinate activities under the contract with related activities and services provided by other organizations;

(8) The sponsoring organization understands and agrees that payments from the board under the contract will be provided monthly or quarterly upon submission and approval of

payment requests in a form and containing information specified by the executive director of the board, and that approval of payments shall be conditioned upon the executive director's determination that the sponsoring organization is in compliance with the terms of the contract and this chapter;

(9) The executive officer of the sponsoring organization has reviewed the application, including all assurances contained therein, and is authorized to submit the application and execute a contract in accordance with the application if it is approved by the board; and

(10) The executive director and staff of the board will be provided access to financial and other records pursuant to the contract.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-110 Criteria for selection of contracts to be awarded.** (1) Initial contracts. For each closing date established as specified in WAC ((250-44-070)) 131-49-070, applications will be ranked competitively according to their performance with respect to:

- (a) Size of the potential population to be served;
- (b) Demonstrated need for the proposed services;
- (c) Experience and capabilities of the sponsoring organization;

(d) Provisions for coordination of services with other organizations providing related services in the geographic area.

(2) The executive director shall develop a system for evaluating initial applications with respect to the above-stated criteria, and make available in the application guidelines a description of the system.

(3) Final selection of initial applications to be approved will be based upon both relative ranking on factors listed in subsection (1) of this section and appropriate geographic distribution.

(4) Renewal contracts. The sponsoring organization may be eligible to renew its contract for one ensuing biennium provided the sponsoring organization was in full compliance ((with the 1999-2001 contract. Thereafter, the sponsoring organization may be eligible to renew its contract for one subsequent biennium provided the sponsoring organization was in full compliance)) with the contract and performance indicators established by the executive director.

(5) The executive director shall develop a system for evaluating renewal applications and make available in the application guidelines a description of the system.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-120 Procedure for selection of contracts to be awarded.** (1) Initial contracts. The following steps will be employed in screening and selection of applications to be approved for initial contracts:

(a) Applications will be screened for eligibility and completeness;

(b) A panel of application readers will be established, to consist of board staff members designated by the executive director, members of the advisory committee who are not

members of the legislature or employees of sponsoring organizations, and such other persons as may be deemed appropriate by the executive director;

(c) Within each category of application as described in WAC ((250-44-110)) 131-49-110(1), the panel of readers will evaluate and rank qualifying applications according to the system published in accordance with WAC ((250-44-110)) 131-49-110(2);

(d) The advisory committee will consider evaluations prepared by the readers, and will develop a list of recommended approved applications to be awarded contracts;

(e) The list of recommended approved applications will be submitted to the executive director of the board for approval. Upon approval the executive director will award the contracts.

(2) Renewal contracts. The following steps will be employed in screening and selection of applications to be approved for renewal contracts:

(a) Applications will be screened for eligibility and completeness;

(b) In cooperation with the advisory committee, or a subset thereof, the board will evaluate qualifying applications in accordance with WAC ((250-44-110)) 131-49-110(4) and develop a list of recommended approved renewal applications according to the system published in WAC ((250-44-110)) 131-49-110(5);

(c) The list of recommended approved renewal applications shall be submitted to the executive director of the board for approval. Upon approval the executive director will award the renewal contracts.

**AMENDATORY SECTION** (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

**WAC 131-49-140 Length of contract periods.** (1) Contract periods for each contract awarded under the act shall be in accordance with each application proposal, subject to contract application guidelines issued by the executive director, but shall not begin before the starting date or extend beyond the end date of the upcoming biennium.

(2) An initial contract shall be awarded on a biennial basis.

(3) ((A contract funded for the 1999-2001 biennium may be renewed for the 2001-2003 biennium provided the sponsoring organization was in full compliance with all of the terms of the 1999-2001 contract, as evidenced by the on-site compliance reviews.

(4)) An initial contract ((funded for the 2001-2003 biennium, and any contract funded thereafter)) may be renewed for one ensuing biennium provided the sponsoring organization was in full compliance with the contract and performance indicators established by the executive director.